

**MINUTES**

**PLANNING BOARD  
PORTSMOUTH, NEW HAMPSHIRE**

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

**7:00 P.M.**

**AUGUST 15, 2013**

**MEMBERS PRESENT:** John Ricci, Chairman; Anthony Blenkinsop, Vice Chairman; David Allen, Deputy City Manager; Richard Hopley, Building Inspector; John Rice; William Gladhill; Colby Gamester; Karina Quintans; and Alternate Elizabeth Moreau

**MEMBERS EXCUSED:** Nancy Novelline Clayburgh, City Council Representative; Alternate Jay Leduc

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

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Chairman Ricci opened up the meeting by saying that Vice Chairman Anthony Blenkinsop was moving on to a new position as Attorney for the City of Dover. Chairman Ricci said it had been a real pleasure having him on the Planning Board and wished him the best.

**I. APPROVAL OF MINUTES**

1. Approval of Minutes from the August 1, 2013 Joint Planning Board/HDC Work Session – Unanimously approved.

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**II. PUBLIC HEARINGS – OLD BUSINESS**

Chairman Ricci asked for a motion to take Public Hearings Old Business, Items B and C, out of order for purposes of postponement.

Mr. Hopley made a motion to take these items out of order for purposes of postponement. Mr. Rice seconded the motion, and it passed unanimously.

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B. The application of **143 Daniel Street, LLC, Owner**, and **Steven P. Wilson, Applicant**, for property located at **143 Daniel Street**, requesting Site Plan Approval to add a 2 ½ story addition over the existing “gym” and construct a new 60’ x 40’3-story addition on the existing parking lot for the development of a mixed use building including commercial use, 14 residential units and 18 lower level parking spaces, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 105 as Lot 19 and lies within the Central Business B (CBB) District, the Historic District and the Downtown Overlay District (DOD). (This application was postponed at the June 20, 2013 Planning Board meeting)

Chairman Ricci read the notice into the record.

Ms. Quintans made a motion to postpone this matter to the next Planning Board meeting. Vice Chairman Blenkinsop seconded the motion. The motion to postpone Site Plan approval to the September 19, 2013 Planning Board meeting passed unanimously.

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C. 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 126.99 acres and 156.87' of continuous street frontage on Lang Road.

Said properties are shown on Assessor Map 291 as Lot 7 and 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 July 18, 2013 Planning Board meeting).

Chairman Ricci read the notice into the record.

Mr. Gamester made a motion to postpone this matter to the next Planning Board Meeting. Deputy City Manager Allen seconded the motion. The motion to postpone Preliminary and Final Subdivision Approval to the September 19, 2013 meeting passed unanimously.

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A. The application of **Maplewood & Vaughan Holding Company, LLC, Owner**, for property located at **111 Maplewood Avenue**, requesting Design Review to construct a 4-story 27,000 ± s. f. (footprint) mixed use building with commercial use on the 1<sup>st</sup> floor, 71 residential units on the 2<sup>nd</sup> – 4<sup>th</sup> floors and parking spaces on the ground floor level, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 124 as Lot 8 and lies within the Central Business A (CBA) District, the Historic District and the Downtown Overlay District (DOD). (This application was postponed at the June 20, 2013 Planning Board meeting)

Chairman Ricci read the notice into the record.

**SPEAKING TO THE APPLICATION:**

Lisa DeStefano of DeStefano Architects, Jamie Pennington of RJ Finley, and Patrick Crimmins of Tighe and Bond were presented on behalf of the Applicant.

Ms. DeStefano indicated that Design Review had already been presented and they also had a Joint Work Session with the HDC on August 1st. She said their project was designed at the end of 2012, at

which time it met the original requirements for building height in the district. They had redesigned the project to meet the current height Ordinance and it was adopted at the beginning of 2013. They submitted all the required calculations to the Planning Department showing that they met all the height regulations for that particular location. The property is located in the Northern Tier, which has been an area studied for redevelopment for a number of years. In the late 1980s, the City commissioned a report from Sasaki Associates, at which time there was a clear direction for the opportunity and the desire to connect this under-used area to the vibrant Downtown for new energy and vitality. The design goal allowed for a modern interpretation of Portsmouth architecture. At the time, and even as recently as the 2003 study circles and of the Planning Board efforts that got reflected in the Master Plan for Portsmouth, there was a desire for mixed-use development that would engage the public with the lower floors and add residential to the upper floors, promoting energy and activity for a vibrant community day and night. Some of the specifics of the Master Plan for this area include extending the mixed uses such as pedestrian-friendly streets and human scale architecture, a walkable pattern to Downtown, the improvement of City quarters, maintaining an adequate supply of convenient parking, and introducing landscape elements and pocket parks where appropriate. Ms. DeStefano said these were governing directives that they used when they put the design together. The public aspirations in that study contradicted what now existed, and dramatic changes would be needed to realize this broad vision. It was also noted that small incremental changes could contribute to a positive change to build support for the long term change in this area. Their project is one of many in the Northern Tier that have been developed or brought forward for development. She mentioned that they received their HDC Certificate of Appropriateness at the August 7, 2013 meeting.

Patrick Crimmins, of Tighe & Bond, said they met on June 20th for the Design Review meeting and it was postponed so that the Planning Board could have a meeting with the HDC. Mr. Crimmins had a meeting with TAC on June 25th and wanted to discuss a few issues that were brought up, one of which was the alignment of the intersection at Maplewood Avenue and Raynes Avenue. They had engaged their engineers from VHB to examine the alignment and see if the street warranted a conceptual alignment. There were questions about the existing parking area, and they proposed removing landscape islands and adding some spaces on the ends. However, they realized that would require a variance, so they were now thinking of putting the landscape islands and spaces back in. There were several issues about the sewer in terms of the contribution that they would be providing. There was a sewer planning profile in the package and they were trying to pick up additional utilities that DPW had noted were in the streets. They were reviewing separation of water lines and the alignment of the sewer pipe. He brought up the Planning Board's comment about the brick sidewalks and said the plan currently shows brick up to the driveway. The Board had recommended that the brick be installed around the entire site, and he said they would do so. They were going to remove the grass strip that had been proposed along the existing sidewalk and instead extend the sidewalk all the way to the end. His team was undecided about the specification for historic lighting along the site's perimeter, but they would coordinate with their staff and include it in their revised submittal to TAC the following week. Regarding the trash issue, their previous design had 6 rollout bins that would be put on the street and loaded and unloaded by the trash vehicles, but they were working on a configuration that would get the truck off the street and loaded, and it would be incorporated in their next TAC package. He said those issues were some of the bigger ones that had been touched on at the TAC Work Session.

Ms. DeStefano told the Planning Board that they were still working on their specifications and going through the TAC Work Sessions and would return to the Planning Board with their outstanding items.

Ms. Moreau asked whether any traffic study had been done relating to the impact of additional vehicles from added residences. Mr. Crimmins said they had a staff traffic scoping meeting and had submitted a

full traffic analysis as part of the TAC package. TAC comments would be incorporated into that study and presented to the Planning Board at the Site Review.

Chairman Ricci opened the public hearing and asked if anyone present from the public wished to speak to, for or against the petition.

Joe Caldarola of 170 Dennett Street, presented a model. He referenced the historic purposes of preserving and enhancing the historical and cultural characteristics of the community and the criteria to be evaluated by the Planning Department.

He asked them to look at what the City had worked on in the past for planning purposes. The current Master Plan called for North End Tier development to pick up the cues of historic Portsmouth. The proposed building did not pick up the cues and was, in many ways, in opposition to them. He felt the reason tourists visit Portsmouth is because of the human scale. People love the older downtown large buildings like the Athenaeum and 18 Congress Street and think they were wisely designed to appear as smaller buildings that are humanly approachable and felt the same thing could be done with this building. He felt that the Applicant has chosen the opposite approach and applied a factory theme to the building. The towers, the repeated center elements, and the unified roof line on the building plan showed the impression of an imposing building, something modeled on a castle. He stressed that this building would be the first building greeting tourists coming in from the Maplewood Bridge, and if it was devoid of references to historical Portsmouth, it would detract from the City's desirability.

Mr. Caldarella felt that the round element was one of the worst. He pointed out on his scale model that it was 112' long and 32' high, and the figure of a person placed in front of the model reflected its size. The building was an imposing scale and meant to impress but he did not think it impressed, that only the Applicant thought the imposing scale was in their interest. The Planning Board should enforce the historical scale and detail of what currently existed in the City.

Christine Davidson of 1275 Maplewood Avenue said she went to the last HDC meeting and was very concerned, as were many other people. She believed that the Planning Board and the City Council made up their minds before going to the meeting. She hoped that everyone would listen with an open mind to all the people from the public. She mentioned the ancient cemetery across the street and the fine old buildings around 118 Maplewood Avenue that managed to escape the bulldozer back in the 1960s. She thought the rotunda of the proposed building would be stainless steel and asked the Board if that was true.

Mr. Taintor said he did not know because the HDC reviewed the architectural designs of a building.

Ms. Davidson believed that it was going to be clad in metal and felt that was not a building material used in the 18<sup>th</sup> or 19<sup>th</sup> century. She said it would be ugly and showed no respect for their history, and the idea of deferring to antique buildings and their trust would not happen with that material. She thought brick would be fine and that it was great that the awful square building would come down or be disguised in part of the new building because it was an eyesore.

Arthur Clough of 425 Pleasant Street, said that his brother had visited recently and they went to Portland, where there were wide streets and plenty of places for pedestrians to walk. It was a comfortable and pleasant experience, and they got in and out of the city without any problems. He stated that Portsmouth is not Portland and Portsmouth is only 16 square miles. It was not a large city but it was starting to feel like it. He has been backed up in traffic on Maplewood Avenue, heading into

town and it took 15 minutes to reach downtown. Another massive development will add to the traffic problems. They have completely changed Downtown's composition and have hidden the historic and architecturally beautiful and interesting buildings with boxes and a character that is not Portsmouth. The view of the North Church, which used to be a pinnacle, is already obscured. He asked that the Planning Board not let this project go forward as it was and that they respect how important it is to keep Portsmouth unique.

Attorney Jerry Zelin of 17 Kensington Road said that the Design Review process was nothing more than a glorified Work Session and he saw it as an exhibition game. He was going to avoid the aesthetic issues and he would stick to the more typical Planning Board 'nuts and bolts'. One of the points the Planning Board was supposed to look at, according to Section 1.1C, was reducing infrastructure costs. This plan called for 1.5 parking spaces per residential unit but absolutely none for retail. The public had a lot of concern about the Northern Tier growing as a new City that was very different from the old City. He thought it would be a tragedy if the new City became the 'Frankenstein that devoured the old City', and that would happen if the large buildings did not have the parking to accommodate the people who live and work there. As a result, the people would be clamoring for new parking garages and looking at sites on Parrot Avenue or the Worth Lot, and that would be the worst scenario. Consequently, he questioned whether there was enough parking.

Attorney Zelin said that the building had been advertised as 27,000 s. f. on the public notice, but that was just the footprint. It was actually 100,000 s. f. He referred to the Northern Tier Study, adding that it was never adopted by the City but, even if it had been adopted, it was superseded by the Master Plan that was adopted by the City about 6 years later. Assuming that the Northern Tier Study is supposed to guide us, he said it guides us in two ways. He quoted the first way as, "The area is located in a historical district and has two clusters of historic properties". One of those clusters is across Maplewood Avenue from the proposed building. The second way was: "New developments should be compatible to this context, respecting the scale or character of these areas or drawing on the scale of Downtown Portsmouth". In that respect, he said the Northern Tier Study seemed to cut against this proposal. The Northern Tier Study graphics were the opposite. They had scale models of what the authors envisioned as two alternative developments, and if anyone were to look closely at these, they would say, 'Holy smokes, they want to fill in the Northern Tier with big boxed buildings without any open space, though the study's dream of what the area would look like do not show height'. He felt it was hard to tell just how tall they envisioned the boxes buildings to be. It is the Master Plan that counts, and he did not think there was anything in the Master Plan that really took a strong stand on the building's scale.

Susan Denenberg of 44 Wibird Street said she has been involved with the parking issues in Portsmouth for two years and has talked to citizens about it. She has lived in Portsmouth for about 30 years and moved here because she loves it. The people she has talked to who were born and raised here are appalled at what is going on with the new developments. When she looked at this parking proposal, she realized that it had provided for 70 condominiums but did not provide for the retail store's employees and customers. She felt that, when a large building or project is built, the developers will ask that the City build them a parking garage and put the cost on the taxpayer. That was a huge concern for a lot of people, particularly knowing that they are already facing some large increases with the bonding for the wastewater treatment plant.

Clare Kittredge of 27 Franklin Street said she feels the project is too big, too dense and simply inappropriate for the gateway to the City, especially in an area that was supposed to experience a respectful rebirth after the hideous urban renewal devastation. She did not believe the last Master Plan

that called for human-scale development with adequate parking and reflecting the character of historic Portsmouth, envisioned projects of this scale and density for the North End renewal. She thought it was inappropriate to approve the application.

Duncan McCallum of 536 State Street said there were a number of eloquent speakers there that evening who opposed this project and he agreed with them. He has lived in the area for over 20 years, long enough to reflect on the unfortunate trend the City has undergone. Friends who have visited him are appalled at what has become of Portsmouth, especially people who visited him in the mid 1990s and who have come here more recently because they know what Portsmouth was then and what it is now. He was opposed to the project and thought it was moving Portsmouth in the wrong direction, that it was not in character with the Downtown area and made a poor transition coming in from Maplewood Avenue. He said it needed to be scaled back.

Karen Bouffard of 114 Maplewood Avenue had a problem with the building's mass and the scale, but she was also concerned about the 1-1/2 spaces for each of the residents. She did not think that was enough parking because a lot of people have two cars. More important, there were no retail store parking spaces and there was already a huge problem with parking on Maplewood Avenue. She said people park there and leave their cars for the day while they go Downtown, which is why they put the meters back. There had been several times when her driveway was blocked, or people parked in her building's lot or behind the building, and she saw more issues with the proposed building's retail stores and the lack of residential parking.

Arthur Clough, second time speaker, thought one of the things that happens when a Board approves a new development that does not have enough parking is that they make a new argument for Portsmouth taxpayers to provide a service, sold at a discount to the people who use them. He said a friend who lives Downtown pays \$100 a month in the Hanover Garage because it is cheaper than his own building's garage. Mr. Clough felt that the Planning Board must not allow any further development that does not have adequate parking.

Chairman Ricci called for second time speakers, then third and final time speakers. There were none, so he closed the public hearing.

### **DECISION OF THE BOARD:**

Chairman Ricci requested a motion to determine that the Design Review process for the project had ended. Vice Chairman Blenkinsop made a motion to end the Design Review process. Mr. Rice seconded the motion..

Vice Chairman Blenkinsop said there would be another opportunity to discuss the proposal as part of the Site Plan process and he asked Chairman Ricci for confirmation that they would move forward to the Site Plan process next.

Chairman Ricci agreed and said it was just a formality to move it forward to the Site Plan process next and it would be advertised again for a public hearing.

The motion to end Design Review passed unanimously.

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D. The application of Seacoast Trust, LLP, Owner, for property located at 150 Route One By-Pass, requesting Site Plan Approval to place a 10' x 60' mobile diagnostic coach on a concrete pad in front of the existing medical building with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 231 Lot 58 and lies within the Single Residence B (SRB) District. (This application was postponed at the July 18, 2013 Planning Board meeting).

Chairman Ricci read the notice into the record.

**SPEAKING TO THE APPLICATION:**

Peter Weeks of PGW Real State Consulting presented for the Applicant. He said back in the 1950s the Crotched Mountain Rehab Center was located on this 2.9 acre parcel which is currently the home for Sports Medicine Atlantic Orthopedics. This parcel has been used for medical facilities since the 1950's. As this parcel is zoned residential, his client has to appear before the BOA for expansion of the non-conforming use. They have received a variance from the BOA and a favorable recommendation from TAC and he was here for final Site Review approval. At their previous meeting, they had discussed the location of the mobile coach in front of the building, and some members questioned why it had to be placed in the front. This mobile coach, because of access from inside the existing building, would only work if it was in front of the building. He also added that this location was approved by the Planning Board in 2008 for the exact same request. Mr. Weeks had considered some of the Board's thoughts and amended the plans to have an 8' fence instead of a 6' fence, and continue the existing hedge landscaping along the new fence to match the landscaping around the old fence. He pointed out that this property was the most well-maintained commercial property in that area. Some Board members didn't think that the mobile coach would not look pleasing. He point out that their rendering shows how it doesn't even look like a mobile coach. They had suggested that they have a split rail fence. Mr. Rice had said fences get knocked down and look untidy however Mr. Weeks said the Applicant has a full time maintenance crew and if anything like that were to happen, it would get fixed. He asked for Site Review approval and said that John Lorden from Millette, Sprague and Coldwell was available to answer technical questions.

Vice Chairman Blenkinsop thanked Mr. Weeks for the photos and asked if they would be willing to increase the landscaping. From looking at the photo, Vice Chairman Blenkinsop saw three tiers -- low shrubs, the 8' fence and the mobile coach -- and it was obvious to him that some trees had been removed. He asked if the Applicant could plant something that would grow higher and provide greater cover. Mr. Weeks said the landscaping in front of the fence would match the fence at the other end, but they could replace the two trees that were in front of the fence.

Vice Chairman Blenkinsop said he would like to see something more done from the landscaping prospective, from the left of the tree that remained in the area with the fence and the short shrub, something that provided more cover.

Mr. Rice said he was wondering why Mr. Weeks had not considered some kind of spruce tree or a tree that would grow to the height of the mobile coach. Mr. Weeks said they tried to match the landscaping to what was already on the site, and this particular type of shrub was what was currently on the site. They would consider trying to match the type of trees that were there, but thought it would not be appropriate to add another type of vegetation.

Mr. Rice asked why not. Mr. Weeks said the property is very nicely kept. Mr. Rice agreed that it was nicely kept, which is why the Planning Board was having trouble with the mobile coach parked permanently in front of the building and felt that it should be camouflaged more appropriately.

Mr. Gladhill agreed and said maybe some type of evergreen tree should be planted. He said New England has such short seasons that leaves don't stay on the trees all year and people could see through the branches. He wanted to continue the flow of the landscaping but felt it was okay to have something different, especially if it benefitted the area.

Mr. Weeks asked if they could have a stipulation that the Applicant would work with the Planning Department to provide appropriate screening for the area, maybe something from the existing tree to the end of the fence. He didn't want to pick a particular species and later find out from an arborist that it was not a good choice.

Mr. Taintor said that the photographs showed the bushes in front of the fence, and he asked Mr. Weeks if they were part of the plan set. Mr. Weeks said it was not in the plan set, that when they first submitted the plan, it referenced trees in front of the fence. He said they would amend the final plan for approval.

Mr. Taintor said that it seemed like they did not actually have a plan that corresponded to the discussion, and he asked if Mr. Weeks was interested in a stipulation, for example, 3' shrubbery along the length of the fence. Mr. Weeks said that Page C2 of the submitted plan showed the two trees. Mr. Taintor asked if he was proposing to remove those two trees and replace them with bushes. Mr. Weeks said yes, that the Board was suggesting they continue the shrubs down to the fence.

Mr. Gamester asked if the tree on the left would be eliminated. Mr. Weeks said it would be, otherwise it would not survive.

Chairman Ricci asked how long the mobile unit would be there. Mr. Weeks said it was not an in-and-out situation.

Vice Chairman Blenkinsop said it would be helpful to have a landscaping plan to reflect what was proposed. In light of some of the comments made, the landscaping plan would contain shrubs and 8' evergreen-type trees to provide camouflage. He said he had some discomfort with the proposal overall but felt it could be alleviated with landscaping and that, without a landscaping plan that showed exactly what would be there, it was difficult.

Chairman Ricci asked if the Applicant could work with the City staff. He said he was considering three or four plantings and just wanted to break up the mass, and that was what everyone was agreeing with. Mr. Weeks said they have a lot of Greenery Committee resources and they wanted to break it up with vertical elements. He asked if the Board would be comfortable if the Applicant dealt with it administratively.

Mr. Rice said that when the trees filled in, the mobile coach would not be noticed. He thought it was bad planning for the Gateway District to have a big truck in front of the building, no matter how altruistic the purpose of that truck was. He felt that having it there permanently set a bad precedent. Taking it to an extreme, he said you could have a freezer truck camouflaged in front of 5 Guys Burgers.



Mr. Weeks said the BOA stipulated that no advertising be on the side of the mobile coach. Mr. Rice said he was not talking about advertising but rather how it would visually look if it were there for five to ten years. He thought it would be best if there were taller trees to camouflage the coach.

Chairman Ricci said he was comfortable seeing how nicely it was currently landscaped and thought that the Applicant and the City would do a great job with whatever they put together.

Chairman Ricci opened the public hearing and 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.

**DECISION OF THE BOARD:**

Vice Chairman Blenkinsop made the motion to determine that the application is complete according to the Site Plan Review Regulations and to accept the application for consideration. Mr. Allen seconded the motion.

The motion to determine that the application was complete according to the Site Plan Review Regulations and to accept the application for consideration passed unanimously.

The motion to grant Site Plan Approval passed unanimously with the following stipulation:

1. That the landscaping plans shall be updated to the satisfaction of City staff, to include plantings that address the Board's concern for year-round screening of the mobile coach.

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E. 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. (This application was postponed at the July 18, 2013 Planning Board meeting).

Chairman Ricci read the notice into the record.

**SPEAKING TO THE APPLICATION:**

Mr. Taintor said there had been a lot of discussion about this, both at the opening session of the City Council public hearing on the proposed zoning change and at the Joint Work Session with the Planning Board and with the HDC on August 1. A number of changes had been suggested to the Ordinance and it had become complex.

He said some people at the City Council public hearing had expressed concern that the HDC would be the Conditional Use Permit Granting Authority. Some suggested that it could be done by the City Council or by the BOA and that it could be done by variance rather than by Conditional Use Permit. A range of options had been discussed.

Mr. Taintor said that, at the July 18 Planning Board meeting, they had discussed a tiered system with a 50' height limit and 4 stories in the CBB District and 45' as proposed by the City Council for the CBA District. The Staff had added a wrinkle to that by suggesting that they go to 3-1/2 stories rather than 3 stories to get away from the prevalent flat roof buildings.

They also discussed what types of criteria should be used to grant a Conditional Use Permit. There were two criteria in referral from the City Council. At the August Work Session, an HDC member came up with some criteria that he felt were more specific, and Vice Chairman Blenkinsop did some wordsmith work on it, and the Staff had also worked on it to make it more specific. Mr. Taintor had recently sent out a 4-page table with the staff memorandum listing what was referred by the City Council and what the recommendations were in the June staff memorandum. It also included the ideas and proposals that came out of the Work Session. He gave the Planning Board a worksheet to try and break it down and thought the Planning Board could do a straw poll on each of these issues until they felt comfortable with an amended Ordinance. He wanted to focus the discussion on each of these areas and told Chairman Ricci that the public hearing would have to be reopened before they got into a full discussion.

Chairman Ricci said he would rather have the discussion and have the Planning Board go through each issue, and then he would open up the public hearing.

Vice Chairman Blenkinsop said he had concerns with Item A, which talked about maximum building height and the City Council referral being 45' or 3 stories, because the Planning Department had recommended 45' or 3-1/2 stories. Through the Work Session, they had broken it down between the CBA and CBB Districts— 45' or 3-1/2 stories in the CBA District, or 50' and 4 stories in the CBB District. He wanted to focus on the 50' and 4 stories in the CBB District, and one of the reasons the half story seemed like a good idea was because it led to the variation in roof line and not the build-up to the maximum flat roof line. He wondered if everyone would build to the height and have flat roofs. If the CBB District had 50' and 4 stories, everyone would want to go with 4 stories with flat roof and no variation, and they were trying to encourage the variations of roof lines. There should be 4-1/2 stories as opposed to 4 stories to keep it consistent with the CBA District.

Chairman Ricci said it made more sense to use the 3-1/2 stories.

Ms. Moreau said it made more sense to do the 50' and 4-1/2 stories rather than just the straight 4 stories because it promoted more variation.

Mr. Hopley said he zoned in on some of Mr. Taintor's statistical analyses in terms of the number and percentages of buildings at each given height increment on Pages 9 and 10 of the memorandum. There was a compelling reason to keep it simple and in line with the data by stating 45' and 3-1/2 stories across the board. He did not want to go with the past practices of the CBA and CBB Districts by thinking it would be in place for a year or two and then changing when Form Based Zoning came. He wanted to reach out to those concerned with building height in the Downtown area.

Ms. Moreau said they had to keep in mind that Form Based Zoning would not cover all of the CBA and CBB Districts, and there would be areas of hot topics of development like there is for Islington Street and the Northern Tier. She felt that this would be the governing law for a long time until Form Based Zoning could be expanded, which would probably be in two years.

Chairman Ricci wanted to examine the procedure for allowing increased building height. He said Item B1 was referred to by the City Council as a Conditional Use Permit by the HDC, the BOA or the Planning Board. For discussion purposes, he said he would feel more comfortable with a Conditional Use Permit and would like to see it granted by the BOA. He felt that it gave some separation from the HDC and that it should be a Planning Board issue, not a City Council issue.

Mr. Gladhill said that the Conditional Use Permit should be granted by the HDC, and if they thought about the current standards, design and materials, and the many Work Sessions it took to get to that point, was that something they wanted the City Council or ZBA to get involved in. He asked if they really wanted all the Work Sessions where they discuss things like changing the gutters to copper or changing the gabled roofs, and felt they should leave it to the HDC because that was their expertise.

Mr. Rice said he agreed with Mr. Gladhill. The HDC had the power to discuss building height and to override a Zoning Ordinance to allow for something smaller if necessary. It was an aesthetic issue and that the HDC would be better versed in it than the BOA.

Mr. Allen agreed that the Conditional Use Permit was the way to go because a variance has a separate set of standards that would be difficult to judge in the case of building height. He initially thought it should be the HDC because they did that kind of detail, but the BOA had the 3-dimensional footprint and there would be conditions to be met. The HDC would still have size, mass and material authority. The BOA might say they would grant it to 50' because it was what the Applicant wanted, but the HDC might say there were design details that did not make it work at 50' and the HDC would still have the authority to reduce height.

Mr. Taintor agreed and had prepared some wording that would clarify it.

Mr. Gladhill said it was the same situation that they currently had. Zoning was saying you could build up to 50' or 60'. If BOA was allowed to make that decision, the Applicant would go to the HDC and tell them that BOA said they were allowed to build up to 50'. That would happen if the Conditional Use Permit were taken out of the HDC approval.

Chairman Ricci asked Mr. Taintor if he really did have the language addressing this issue. Mr. Taintor said if the Planning Board decided to recommend that the Conditional Use Permit Granting Authority be assigned to a Board other than the HDC, then he would recommend the following wording: "The granting of a Conditional Use Permit, under the section, shall increase the maximum allowable building height for the proposed development and shall not be construed as restricting the authority of the HDC to require a height lower than said maximum allowable building height". He agreed with Mr. Gladhill that, if the Planning Board was just granting the increase, they were in the same situation as before with the HDC.

Ms. Moreau said she was struggling with the idea that this all depended on the criteria for granting a Conditional Use Permit. They were using criteria that was more related to the architectural aspects of it and more in the HDC, and she wanted to see it more black and white versus gray.

Mr. Taintor asked her if she thought the Board would look at Item E before Z. Ms. Moreau said that would dictate who the better Board would be to actually make that decision.

Chairman Ricci said on Page 2 of Mr. Taintor's memorandum, the criteria for granting a Conditional Use Permit, Item E1, was referred to by the City Council as either "building height is no greater than the height on any building on any abutting lot or a lot located directly across the street", or as "the increased building height will allow for the provision of significant and direct benefits to the City as determined by the HDC".

Mr. Taintor said they had all struggled with this at the last meeting and at the August 1 Work Session and had discussed Item E2. The building and site design would minimize the impact of the increased building height on neighboring properties and significant and direct benefits to the historical and cultural character of the City, including provision of publicly accessible open space, provision of underground parking, quality of building design, quality of building materials, engagement of pedestrian traffic on abutting sidewalks, use of scaling elements in the building design such as setbacks, street lines and cornice lines, use of gabled roofs, inclusions of roof decks or roof gardens, use of symbolic identify towers, historical preservation, and protection of significant view corridors. He said that had more of a BOA flavor than the HDC.

Mr. Rice wondered if they should add some language in Item E2 that referenced the location of the structure calling for an anchor building of greater mass as one of the criteria for allowing a higher structure, such as the 100 Market Street project. When he was the HDC Chairman, some people liked it and some did not. It was a massive building and the HDC approved it because it was replacing the large Standard Plumbing building and was in a large lot. They felt it should be an anchor building of important mass so they could understand the height, but they also wanted the penthouse at the top recessed. They talked about ironing the roof line of the Iron Works site, which seemed to have been lost in the shuffle. When he saw it, he felt that some language about an anchor building should be included and be one of the criteria they would use to allow something to be greater mass or height.

Chairman Ricci commented that everyone would want an anchor building.

Mr. Rice said most of the buildings that are built today are falling into that category, and that was something they 'hung their hat on' when that building was built and was the reason they felt comfortable with the height. However, there was the same hue and cry about it then as there is today, and they were pilloried and almost run out of town for that decision.

Mr. Gladhill referred to the discussion about the quality of building design and building materials. He knew that the HDC could determine whether a building should have single pane wooden windows or aluminum windows. Some items could take three Work Sessions to determine if the right window is the right quality for the building, and he wondered if the BOA or the City Council wanted to spend that much time determining it because it could take months. The Applicant could just say they would be back the next month to see if it qualified. That would be a big work load.

Chairman Ricci felt it gave a break to the HDC and also a new set of eyes to look at things. He said sometimes you can get so deep in the forest that you can't see the trees, and maybe that was why BOA was there, to be a fresh set of eyes that provides a new perspective.

Vice Chairman Blenkinsop referred to Item E3 and the criteria for granting a Conditional Use Permit. He asked Mr. Taintor what the differences were between the two main bullets in his changes to Item E3 on Pages 3 and 4. Mr. Taintor said the information came from Nick Cracknell. As proposed in the August 1 Work Session, the first bullet said the design would try to minimize the impact. The revision said that the design would positively contribute to the historical character. They were trying to make a positive criteria rather than a negative one, and the second list of bullets was more specific.

Vice Chairman Blenkinsop thought Item E3 sounded better than E2 because in E2, the first bullet talked about historical character of the neighboring properties and the second bullet repeated the historical character. With the first bullet, they were trying to minimize the immediate impact of those surroundings, but in doing that, they had a more global view. In E3, the wording was an improvement

but he did not see the difference between the two and asked if the second bullet was satisfied by satisfying the first bullet. To him, they were fairly similar because both referenced the significant historical character benefits.

Mr. Rice asked what would happen if they got rid of the first bullet. Chairman Ricci said it would almost say the same thing. Mr. Taintor said he could take out the word 'and' from 'significant and direct benefits for the historical and cultural character of the City' and have the long list of sub-bullets bring the detail from the first bullet.

Mr. Gamester told Mr. Gladhill that he was able to grant a Conditional Use Permit for 173-175 Market Street at his last meeting without having all this discussion, and he asked him how that process went. Mr. Gladhill asked if he meant personally or from the HDC standpoint. Mr. Gladhill said, on a personal level, that at their Joint Work Session he interpreted the original language to mean 'a significant historical improvement'. He said if you look at the drawing and the façade of the historical building and the new addition, it shows an improvement to Market Street. The developers took the time and effort to restore the façade of the original building by matching it to a 1905 photograph that they found. He thought it was a very historical benefit and he interpreted it that way. He said the vote was 5-2.

Chairman Ricci opened the public hearing and asked if anyone present from the public wished to speak to, for or against the petition.

Christine Davidson of Maplewood Avenue said she had a few questions. She referenced the sheet that the public received and pointed out that it said 'as referred by City Council, maximum as of right building height, CCA and CCB, 45' or 3-1/2 stories, whichever is less'. She thought it was only 3 stories.

Mr. Taintor said that was a mistake and that it should say 3 stories on the City Council side and 3-1/2 stories on the June staff memorandum side. Chairman Ricci stated that it was 3 stories and 45' for the City Council.

Ms. Davidson reminded everyone that in the 18<sup>th</sup> and early 19<sup>th</sup> centuries, the 3<sup>rd</sup> stories on two of the old houses along Islington Street were not the same as a 3<sup>rd</sup> story today. The ceilings were low and the area was cramped because the owners lodged their servants and slaves on the third floors. At that time, about 40% of the United States population was indentured, so a lot of those third floors were an integral part of the buildings. She felt that the Conditional Use Permit under the HDC would be 'loosey-goosey' and that the 3 stories would easily be allowed, that people would feel a developer could get away with anything. If the Planning Board was careless about the Conditional Use Permit, then they would have a problem with unhappy and disappointed people who have lived in Portsmouth or have contributed to the City by restoring their homes. She felt that the Planning Board needed to elaborate and add language to whatever wording they have, and that they should be very careful in giving the Conditional Use Permit to developers.

Susan Denenberg of 44 Wibird Street said that when she first looked at the provision, it had started with the City Council and is seemed simple. The provision had said 45' or 3 stories, whichever is less. She said people can understand that, but now they have a large exception that swallows the rule, and they do not want that. They want clarity. She felt that the exception is so broad the way that it is written, even with the variations, that it would give guidance. No one seemed to agree what the language meant. If there had to be an exception, it should be really difficult to get that exception, and

should be more in line with a variance due to need or hardship. She thought the point of having this limit was to put something in place so that things did not go haywire. As an example, she mentioned a new article about Hampton Beach possibly permitting a 100' tall building. She respectfully asked the Board to look carefully at the exception and not just the rule, and that the rule be across the City, not one thing in one district and one thing in another district.

Bernie Pelech of 175 Thaxter Road hoped that the Legal Department had been consulted because there was very specific enabling legislation for the ZBA, the Planning Board, and the HDC, and that these Boards could only do certain things. He said, for example, that the ZBA can grant variances or special exceptions, administrative appeals or equitable waivers. He did not think they had the authority to grant Conditional Use Permit, so the Legal Department should weigh in on what each of these Boards could or could not do if the Conditional Use Permit was the mechanism they were going to use.

Mr. Taintor said that the statute on Conditional Use Permits specifically says that the ZBA can grant them and actually lists several Boards like the Planning Board and the ZBA, and then says "any other board or officer can grant them", so he felt it was extremely broad as to who can grant them. He said the Legal Department had already written a memorandum on it.

Attorney Jerry Zelin of 70 Kensington Road said that none of the options before the Planning Board was perfect, but any of them was better than the status quo and they could not afford delay. If they decided that the ZBA is the better Board to rule on the Conditional Use Permit, then they would be ruling on whether to grant a special exception, and that was in the statute. He referenced Section RSA674:33, IV and said that it specifically authorizes the ZBA not only to grant variance but to grant a special exception when the local zoning ordinance empowers them to grant an exception and when it includes criteria for when they should deny the special exception. So, if someone were going before the ZBA, what they were calling a Conditional Use Permit was, in ZBA talk, a special exception and was not anything extraordinary for various ZBAs across the state. If instead the HDC were chosen first to grant the Conditional Use Permit, the HDC decision would be appealable to the ZBA. He wanted to consider what the standard of review would be that the ZBA exercises, if it granted deference to the HDC judgment or did the ZBA get to apply its own expertise on ZBA-type issues such as anchor buildings. He was concerned that though the Conditional Use Permit concept allowed some elasticity, it would also allow some developers to file appeals over and over again from the HDC's decision if the HDC was not giving the Conditional Use Permits out like candy. He liked the idea of allowing a Conditional Use Permit among other reasonable circumstances, for example, when an anchor building or a suitable monument. He considered a corner lot or an entrance to the City reasonable. He thought they might be able to fine tune it a bit and encourage anchor features such a clock tower on a shorter building rather than encouraging large anchor buildings where a clock tower might be suitable. He was concerned about the proposal to relax what the City Council endorsed and to change this proposal from 45' to 50' in the CBB District and from 3 stories to 3-1/2 or 4 stories. The problem, he said, is that the CBB District is not homogeneous but is most of the City. The CBA District is just the waterfront from the Memorial Bridge up along Bow and Ceres Streets and then the very northern part of the Northern Tier close to Mill Pond. The CBB District is very diverse because it includes Congress Street and the rest of downtown. Congress Street deserves taller buildings, and the rest of Downtown does not. He was concerned that relaxing this provision to allow up to 50' throughout the CBB District would permit buildings that are taller, and 50' was too high, particularly considering how the Zoning Ordinance defines height. He said it defines height for a building with a sloped roof as the midpoint on the sloped roof, so if there is a 50' height limit, it really means that there are going to be buildings with sloped roofs that are 55' or more in height. The Zoning Ordinance exempts items such as heating and ventilation equipment and elevator shafts as long as they are not

more than 10' above the roof, so a 50' height limit would be more than 50'. He felt that would inappropriately tall, especially if given a matter of right and applying that throughout downtown. It would be reasonable to apply it just to Congress Street. He liked the idea of the half story because it encourages the setback and he would be disappointed if the proposal to have the CBB District's limit to 50' and 4 stories eliminated the half story mechanism that encourages developers to have setbacks. He thought 3-1/2 stories was a good idea.

Clare Kittredge of 27 Franklin Street compared the Conditional Use Permit situation to a pickle. She said the height limit has to do with aesthetics and she agreed the Conditional Use Permit should stay with the HDC or at least the City Council because they are accountable to the voters every two years. The idea was to have someone who has the will to set limits. As for the BOA, she felt that it was not slanted toward aesthetic issues. Part of the crisis in Portsmouth was that the HDC did not seem to take its preservation mission of adequately protecting the City's historical character seriously enough. Normally, it would seem like the appropriate entity to grant those exceptions, but it seemed really dangerous in Portsmouth to weaken the power of the HDC. She felt that this particular HDC had some issues and agreed that restrictions should be put on granting exceptions. She also worried about increasing the height limit from what the City Council endorsed and that this new height limit was critical to restoring balance, proportion and prudence to growth in the Historic District in order to protect Portsmouth's fragile assets. She felt that increasing the height limit and making exceptions too easy to get made the whole effort mute.

Attorney Peter Loughlin said that the whole debate that night showed him that the system works. The City Council came up with a stop-gap measure proposal, and the Planning Board had thoughtful discussion. The chart they had was very helpful, but he felt that the audience was at a disadvantage because the Planning Department seemed to be looking at a different chart than they were. The Planning Department talked about Item E3, but the public's chart didn't mention anything about E3, and he wondered if they had an older version.

Mr. Taintor said he just took all the material handed out to the Planning Board on Monday and tried to break it down to a step-by-step approach, so it was the same material but was broken down for discussion.

Attorney Loughlin said he spoke at a public hearing on the City Council against the 35' height limit and had a few concerns about it. People think there is an advantage to parking underneath a building, but in many cases the parking pushes the building up. Portsmouth requires that the first floor Downtown be retail, which pushes the 1<sup>st</sup> floor up higher than if it were residential. He questioned why they wanted just 3-story building downtown after decades of being allowed to have buildings higher than 3 stories. For the past 20 years, he had reservations with the HDC's ability to limit building height below 60' and always worried that something would happen. Maybe a Superior Court Judge would say the ordinance allowed 60', so why would the HDC say it can only be 45 or 50'. He felt that it was an advantage to the City to present the height limit but state that you could go above it. He also felt that it was an advantage to the developer who thinks he can do 60' and so many units, and then makes an offer and spends tens of thousands of dollars, only to find out that 60' is not allowable and he's locked himself into a purchase and sale agreement. Attorney Loughlin thought there was an advantage to at least including an asterisk stating that you can go to 60' but showing the limitations so that people would be aware of that from the beginning. He asked what the problem was with the Popovers and the 100 Market Street buildings. He thought they were great-looking buildings, even though they were higher than 45'. He thought that the HDC had done a great job and liked the idea of 50' or 4-1/2 stories but he thought it made sense to set the limit at 50' and 4-1/2 stories. He agreed with

Mr. Rice and Mr. Gladhill about giving the HDC that authority. The HDC could spend months looking at a process and be in the best position to decide if a particular location should allow 10' more if the building was a monument building. It would be inane for the Planning Board and developer to make the case to the HDC then have to go to another Board that had no knowledge of the property's facts and to have to remake the argument. He felt that it was disjointed and difficult for the developer. As for whether or not the HDC could grant a Conditional Use Permit, he had not examined that and liked it being done with the HDC. He was also glad that the Planning Board has suggested expanding the condition. It made no sense that the City Council had to determine building height by the lowest building surrounding the proposed building, and he gave an example. If the building at the corner of Congress and Middle Streets were to be replaced for an anchor building, under the proposed Zoning Ordinance, they would have to refer to the Charette and consider the neighboring non-contributing 2-story white cinderblock building across the street. The Planning Board was moving in the right direction by considering taking that clause out. He wasn't sure if the Planning Board or the City Council would be ready to make final recommendations immediately, but he liked the thoughtful review by the HDC in giving them more direction in terms of the height. He has represented many clients that had proposed buildings over 45 or 50' and urged the Board to continue with their thoughtful discussion.

Bob Shouse of 555 Dennett Street was in favor of the 45' restriction for the Conditional Use Permit if the intent was to save the historic core of downtown. He thought 45' was a good number, and the Conditional Use Permit would allow people to bend the rule. In a previous meeting, he had said that if they had the 45' limit before, they would not have the Popovers Building, which is beautiful, but they also would not have the Kelm Building, which is hideous. He said they were going in the right direction if the intent was to save the historic nature in downtown Portsmouth and that it was a positive step to control growth, a hot button issue. He encouraged the Planning Board to look favorably on this amendment and to pass it. He said if he were on the City Council, he would vote in favor of it.

Arthur Clough of 425 Pleasant Street supported giving the HDC or any Board the power to keep building at a short and aesthetically-pleasing height. He said the Mayor had made it clear that it was open door season for the developer Downtown to get additional tax revenue. Some people would like more money for their department and see more tax revenue coming in and be able to spend more money. He cautioned against doing it at a loss as to what makes Portsmouth unique, that the public needed a Board that protected the visual and historical integrity of the City. He said he lives in the Historic District and when he removed his house's asbestos siding, the HDC had told him would lose the house if he did not remove the asbestos. He was held to a high standard to take hazardous material off his house, yet these big buildings were allowed to be built downtown, buildings that were too tall and obstructed the beauty of the City. He asked if people had looked at the building at the corner of Fleet Street, with all its character, and then looked at the Popovers Building next door, which looked like a movie prop. There was a lot of value in not obstructing views and if they ever built a parking garage at the Worth Lot, the big windows at the top floor would disappear. He said Portsmouth was starting to look like a Midwest strip mall – character-free, not historic, and very little detail compared to what homeowners are required to do to their homes. He had heard of people being forced to take tin roofs down because they were supposed to be copper. He asked that they keep the building height low and empower the HDC and any other Board to limit the height.

Chairman Ricci called for second time speakers.

Attorney Jerry Zelin wanted to point out that they were really addressing two separate issues with one solution. One of the issues was that this was a temporary solution for urban infill because everyone



assumed that it was destiny to have Form Based Zoning in that area. He said that the Northern Tier would be left alone for quite a while after all this, and when they were coming up with dimensional restrictions for the CBB District, they should keep in mind that the CBB District has the urban infill downtown and then there's the Northern Tier, and the last thing they want is a Zoning Ordinance encouraging more boxes in the Northern Tier.

Bob Shouse thought the difficulty in applying these rules was that the rules become so convoluted, they are tough to interpret. He wanted to cast a vote for Mr. Hopley's wisdom that 45' across the board simplified matters.

Chairman Ricci called for third and final time speakers. There were none, so he closed the public hearing.

**DISCUSSION AND DECISION OF THE BOARD:**

Chairman Ricci wanted to review each item and get a consensus from the Board.

Item A: 45' or 3-1/2 stories in the CBA, or 50' or 4-1/2 stories in the CBB

Mr. Hopley voted for 45' and 3-1/2 stories.

Vice Chairman Blenkinsop asked Mr. Taintor if the 50' or 4 stories in the CBB District was a potential option, or if 50' and 4-1/2 stories worked. Mr. Taintor said that it should work because the 3-1/2 stories could fit as well as the 45', but he had not done the analysis and said it would depend on the height of the first story. Chairman Ricci said it was "whatever was less", so if it was 50' it would overrule.

Mr. Gladhill voted for A2, which was 45' or 3-1/2 stories. He thought the topping out, the 50 and 60', and the definitions of story, half story and story upgrade were helpful.

Mr. Rice voted for A3, 50' and 4 stories.

Mr. Allen, Ms. Moreau, Mr. Gamester, and Ms. Quintans voted for A3, 50' and 4-1/2 stories.

Final consensus: CBA District: 45' or 3-1/2 stories. CBB District: 50' or 4-1/2 stories.

Item B: Procedure for Allowing Increased Building Height

All were in agreement with Conditional Use Permit with the exception of Ms. Quintans, who did not vote because she was not comfortable with their reason for including the mechanism of a variance or Conditional Use Permit with the zoning in Item A3.

Item C: The Conditional Use Permit Granting Authority to the HDC

Voting for HDC:

Mr. Gladhill, Mr. Beckinsop, Mr. Rice, Mr. Gamester, and Ms. Moreau.

Voting for BOA:

Mr. Hopley, Mr. Allen, Ms. Quintans, and Mr. Ricci.

Mr. Taintor said 5 to 4 votes were not a consensus. Chairman Ricci said he would want this to go back to the City Council because the public, the HDC and the Planning Board deserved it.

Item D: There was no consensus because it was a mute point if the HDC would issue the Conditional Use Permit.

Item E: Criteria

Mr. Gladhill asked if they would just go with the first bullet as amended by Vice Chairman Blenkinsop.

Vice Chairman Blenkinsop referenced E3 and it consisted of the amended statement and the bullets.

Mr. Gladhill said he would like Bullets 1 and 2 at the bottom of the list because they had more to do with Planning, and Bullets 3, 4, 5 and 6 had more to do with the HDC and the historic character, so those bullets should be at the top. Chairman Ricci said the bullet order had no legal significance.

Mr. Rice said it was anchor buildings and spires for him. He wanted to have anchor buildings found on corner lots added to the list of criteria. He mentioned that the buildings in Charleston, SC were all low and the only prominent feature was the beautiful Commerce Building with a tower. He was struck by something one of the public speakers had said about losing sight of the North Church spire and preserving a sense of place and well-being. He said they had not talked about the influence that the Portsmouth spires have on them and it would be nice to have a clause outlining the protection of significant view corridors amended in respect to the City's spires.

Mr. Allen said he took pictures that day and found that the North Church spire was only marginally visible from the new single-floor Maplewood Building.

Mr. Hopley voted for E3 as amended, but had a comment about the anchor building and the corner lot that someone had mentioned and asked if that was 111 Maplewood Avenue.

Ms. Moreau voted for E3 with the amendment to take out the second bullet in the end. Mr. Gamester voted for E3, yes on the anchor building but no on spires. Ms. Quintans did not vote because she needed a little more understanding of the issues.

Chairman Ricci voted on Item E3 with the stipulation of striking the first sentence 'significant and direct benefits' and the second bullet. He asked Mr. Taintor to look at the half-story definition and the word 'penthouse' and said he could not find a definition of it in the Zoning Code. He asked what a penthouse story really meant and for clarification. Mr. Taintor told him to look at the handout, that they wanted to modify Page 3 by taking out the penthouse part.

Chairman Ricci asked whether they had all the components to make a recommendation.

Mr. Taintor said the consensus was:

- 45’ or 3-1/2 stories in the CBA district;
- 50’ or 4-1/2 stories in the CBB district with existing height limit of ceilings below which a Conditional Use Permit could not be granted;
- Staff recommendations as to the definition of penthouse;
- Procedure: HDC granting the Conditional Use Permit by a slim margin;
- Criteria: the item on the chart handed out to the public that was on the right-hand side column would have the words ‘and significant and direct benefit to the historical and cultural character of the City’ deleted so it would read as follows: ‘The proposed building and site design positively contributes to the context, quality and overall historic quality of neighboring properties of the district’ and would also include the list of bullets.

He said Mr. Rice proposed some changes to the bullets but there was no consensus.

Relating to Required Findings, when they had the August 1st Work Session, they said they did not need the findings and to just go with the criteria.

Vice Chairman Blenkinsop made a motion to recommend the amended Zoning Ordinance Section 10.531 and 10.535, as amended, to the City Council. Mr. Gladhill seconded the motion.

The motion to recommend amended Zoning Ordinance, Section 10.531 and 10.535, as amended below, to the City Council passed unanimously.

1. Amend Section 10.531 – Table of Dimensional Standards – Business and Industrial Districts, as follows (deletions from existing language ~~stricken~~; additions to existing language **bolded**; remaining language unchanged from existing):

	CBA	CBB
Maximum Structure Dimensions		
Structure height	<del>50<sup>2</sup></del> <b>45’ or 3½ stories, whichever is less<sup>2</sup></b>	<del>60’</del> <b>50’ or 4½ stories, whichever is less<sup>2</sup></b>

2. Amend Section 10.535 – Exceptions to Dimensional Standards in the Central Business Districts, by inserting the following new Section 10.535.13:

10.535.13 Increased Building Height by Conditional Use Permit

Within the CBA and CBB districts, the Historic District Commission may grant a conditional use permit to allow an increase in building height above the maximum structure height specified in Section 10.531, up to a maximum of 50 feet in the CBA district or 60 feet in the CBB district, only if the proposed building and site design positively contribute to the context, quality, and overall historic character of the neighboring properties and the district as a whole, including:

- Publicly accessible open space areas such as widened sidewalks, plazas, pocket parks, playgrounds or other significant public open space areas;

- Underground parking in lieu of surface parking;
  - The use of high-quality building materials in the building design including, but not limited to: slate or copper roofing; copper gutters and downspouts; restoration brick; granite sills, lintels, foundations, stoops and steps; and wood windows along the façade elevation;
  - Significant scaling elements in the building design such as increased setbacks, stepbacks, reduced footprint and volume, the use of pitched roof forms, banding, quoining and other massing techniques to maintain a pedestrian scale along the façade;
  - Significant restoration or reconstruction of a “focal” or “contributing” building;
  - Permanent protection of a significant view corridor.
3. In Article 15 – Definitions, Section add the following new terms and definitions:

**Story**

That portion of a **building** included between the upper surface of a floor and the upper surface of the floor or roof next above. It is measured as the vertical distance from top to top of two successive tiers of beams or finished floor surfaces and, for the topmost story, from the top of the floor finish to the top of the ceiling joists or, where there is not a ceiling, to the top of the roof rafters. For the purpose of determining the number of stories in a building, a **story above grade plane** shall count as a full **story**. (See also: **building height, grade plane, half story, and story above grade plane**)

**Half Story**

A story immediately below a roof in which the floor area with a ceiling height of 7 feet or more is not greater than 50 percent of the total floor area of the **story** below. Any exterior wall of a **half story** shall be set back at least 15 feet from any **building** wall of a lower **story** facing a **street** or public right of way.

**Story Above Grade Plane**

Any **story** having its finished floor surface entirely above **grade plane**, or in which the finished surface of the floor next above is more than 6 feet above **grade plane**, or more than 12 feet above the finished ground level at any point.

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F. 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 buffer, to add a gravel parking area with 550 s. f. of impact to the tidal wetland buffer. Said property is shown on Assessor Map 102 as Lot 55 and lies within the General Residence B (GRB) District and the Historic District. (This application was postponed at the July 18, 2013 Planning Board meeting)

Chairman Ricci asked if he could read in Items F under Public Hearings Old Business and Item B under Public Hearings New Business together, hear them as one application and vote on them separately. Deputy City Manager made the motion, Mr. Gladhill seconded the motion, and it passed unanimously.

B. The application of **LJP Properties, LLC, Owner and Jay Prewitt, Applicant**, for property located at **428 Pleasant Street**, requesting Site Plan Approval to convert a 4 unit building to a 3 unit

residential building, demolish rear additions, and construct a new two-story 450 s. f. rear addition, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 102 as Lot 55 and lies within the General Residence B (GRB) District and the Historic District.

**SPEAKING TO THE APPLICATION:**

Brendan McNamara, Residential Designer for the project, in cooperation with Ross Engineering and Easterly Surveying, presented on behalf of Jay Prewitt, the Owner for LJP Properties.

Mr. McNamara referenced Page 2 of the Existing Conditions Plan and said the main core of the existing structure was built in the early 1800s. The original 32' by 28' front rectangle was in a dilapidated condition but close to the original. He said there was a more recent addition and lower quality rear additions that were in extremely poor condition. There were three parking spaces at the rear. All the surrounding buildings on the street were non-conforming under a number of dimensional requirements of the Zoning Ordinance. The property was in an area of multi-family units on one side of Pleasant Street and he pointed out the abutting properties. The rear corner of the property fell into the 100' setback from South Mill Pond.

They are proposing to restore the 1800s building to its original state and build a new addition to the rear that would match the appearance and materials. The existing rear single story addition would be demolished. The proposed structure would be divided into three dwelling units, one per floor. Parking would be provided for 3 cars in the rear with access via Webster Way. The 1<sup>st</sup> floor unit would enter at the rear through the porch, and the other two units would enter through the existing front door by the flagstone path along the east side of the structure. As a result, the existing front steps would remain dimensionally the same but reversed. The increase in living area would be 192 s. f. They had originally planned to include a large addition and 6 parking spaces at the rear in pairs, but that was rejected. In subsequent discussions with neighbors at Webster Way, it became apparent that the narrowness of the 18' lane made vehicle turning difficult, so they created a 7' by 24-1/2' turning easement which would push the parking spaces further toward Pleasant Street, and that easement was granted to the owners of 428 Pleasant Street and to those on Webster Way. The Applicant has also undertaken the improvement of Webster Way by dealing with the maneuverability issue, the garden, the rock elimination, etc. The overall footprint has been reduced from the existing one with the introduction of the turning easement and the subsequent moving north of the parking spaces, along with the path on the east side of the building. Also, the non-vegetative area has been increased. The completed and restored structure will adhere to the requirements of the Federal Energy Start Program and the application has been approved by BOA, the HDC, the Conservation Commission, and TAC.

Due to the reduction in density and the increase in efficiency, Mr. McNamara said there was little substandard change to the utilities. The existing 4 internal gas components would be moved to another side off the edge of the path, along with electric and cable. The existing water and sewer system would be upgraded to 6" along with 1-1/2" of water service, but most important, a dedicated 4" water line would be installed to accommodate a sprinkler system throughout.

Relevant to grading and drainage, Mr. McNamara said measures to control storm water runoff were undertaken. He said the roof drippage would discharge into a foundation perimeter infiltration trench. The pathways would be constructed as part of the infiltration trench system. An inset roof deck at the 3<sup>rd</sup> floor would discharge to this system as well. A rain garden would be constructed on the north side of the 3 parking spaces.

As for landscaping, the existing crab apple and ash trees would be removed for parking space expansions. Planting would be undertaken along the east and west lot lines, with a nice lower hedge. The areas not taken up by the parking and rain garden would be lawn areas.

Mr. McNamara showed the proposed elevations that were approved by the HDC and said the proposed north elevation, which was the street side elevation, was restored to its original design. The proposed west elevations close to the neighboring property showed the setback where windows were accommodated. He showed the original rectangle of the building and the proposed addition to the rear where the outline of the original structure could be seen. The final page showed the proposed floor plans.

### **QUESTIONS FOR THE APPLICANT:**

Mr. Taintor referred to the follow-up staff memorandum and said there were some issues with notification to the TAC hearing, so they had a special meeting on Tuesday to review the project. TAC voted to recommend the plan approval with two stipulations. One stipulation was to include the rain garden maintenance requirements, shown on the landscape plan, in the property condominium documents, and the second stipulation was that the recommendation be subject to confirmation by the City's Legal Department, that the plan as approved by the BOA complies with the off-street parking standards of the zoning rules. Someone at the public hearing had raised the question of whether the variance not specifically posted in the BOA decision had actually been granted.

Mr. Taintor said he was giving them a memorandum from the City Attorney dated that day, confirming that the plan was presented to the BOA and was approved by the BOA. Regardless of whether they actually said that the 3 parking spaces were sufficient, the fact that they had that material before them was in effect granting the okay and satisfied the two stipulations.

Mr. Rice asked Mr. McNamara how they were going to resolve the 3' gap between the buildings. Mr. McNamara said all the original asbestos siding would be replaced. They were making the sub-layer a fire wall and adding the sprinkling system.

Mr. Hopley said he had difficulty following the legends on the landscaping plan and figuring out the difference between the plantings along the easterly side, the large circles and small circles. Mr. McNamara said it showed a consistent mix of large and small plantings and that the smaller circles were shown for clarity.

Chairman Ricci opened the public hearing and asked if anyone from the public wished to speak to, for or against the petition.

Arthur Clough of 425 Pleasant Street handed the Planning Board a few photographs. He said he was served late notices on two occasions and went on to explain in great length why he felt that the city was lax on sending out notifications.

Mr. Clough stated that throughout the process, he had testified that there were not 4 dwellings in the building as defined by the New Hampshire statute. He said there was only one bathroom on the 2nd floor in a common area, neither the left nor the right side had its own bathroom, and that the top floor was an apartment with no bathroom. He knew this because he had gone into the house to see the

previous owner. He did not think this application was lawful and that he should take the issue to court because the City was not doing its job.

Chairman Ricci said that he had been on the Planning Board for eight years and this was the first complaint that he had heard about the Staff and the Board not doing their job. Mr. Clough said he was sorry to be the one to tell him. Chairman Ricci told him that he could ask questions but to keep it factual.

Mr. Clough insisted that his questions were factual, that he had certified letters and Mr. Allen could confirm what he was saying about the late notification. He said that the City Attorney had mentioned the April 23 meeting but that it had not said that, in the previous March 26 meeting, the application had been denied for 5 items, one of which was the 6 parking spaces. As a result, he said the Applicant was able to take a single family home and turn it into 3 condominiums, which meant 3 new property owners and a new parking situation that would displace parking for people in the South End who were forced to park in the street. He had read the legal opinion and thought the 4 units were a problem because there was a granting of a variance on parking but they simply omitted it the second time. They did not change what they were doing to the structure and continued to say that it was 4 units. He thought there was complicity somewhere, that no one had done a site study. He told the Planning Board that they should get the notes from the March 26 meeting. The notes were not included in the plan and he thought it made the City a party to misrepresentation of the facts. The ordinance section did apply to the KHP project and its provisions had been addressed by the BOA on April 23, but it was not on the agenda. Mr. Clough said several people at the meeting told him they believed additional variances were required because there was no site study to see if there were actually 4 units. The elevation showed that it was an obvious expansion of a non-conforming property. His frustration was that the first denial stated there were no mitigating factors to grant the variance, yet the second denial said the condition of the shed was a mitigating factor and advised tearing it down and building something better. As a direct abutter who would be harmed by this, he objected to the notification and the way the information flowed throughout the process, to the lack of public notification, and to the plan as it stood. He said he has lived here for 30 years and would go to court if he had to.

Mr. Clough also asked the Board to explain why a 3-story apartment building had no required second egress for the 3<sup>rd</sup> floor. He thought it was a farce that the project was not scrutinized by the City. He spoke to the person who wrote the New Hampshire Zoning Guide and was assured that the City Attorney would not approve the plan. He requested that the Planning Board postpone the decision subject to an onsite review that would establish his and the public's claims, and that they review the lack of explanation and submittal of the prior floor plan by the developer. He said he had never seen a TAC meeting two days before the Planning Board's decision and he was baffled.

Mr. Allen said these were issues that Mr. Clough had previously brought to his attention about the notification and that he had made the corrections and postponed the TAC meeting to ensure that there was adequate notification. He had explained that it would be going to the Planning Board and that there was notification that the application would be heard that night. He had a memorandum from the City Attorney and he stood by his position that they were allowed to act on the application based on his review of the zoning facts. Previously, when the number of units had come up, the fact that it was a 4-unit building was included on the assessor's documentation and that was what they were going with. Based on the City Attorney's opinion and how the review had gone forward, he said he was comfortable making that decision.

Christine Davidson of 1275 Maplewood Avenue said she used to live on New Castle Avenue and she walked by the building all the time. She was glad it was going to be restored and that it had to be restored and not simply remodeled because it was in the Historic District. She had concerns because the extension in the back of the building did not have much room and the parking situation had been brought up. She thought the most important issue for the Planning Board to think about was the violation about the non-conformance and that it seemed illegal to have that kind of extension in the back.

Chairman Ricci called for second time speakers.

Peter Webster of One Webster Way said he was a direct abutter to the project. For the past 25 years, he had watched the building degenerate into a disgrace and thought the project was a tremendous improvement architecturally. He thought the argument about inadequate parking had been straightened out to their satisfaction and was delighted to have ample parking for three vehicles because there had been no change to the previous number of parking spaces for 25 years. He asked that the Planning Board approve the application because the project had been going on for months and had caused tenuous arguments.

Chairman Ricci called for third and final time speakers.

Mr. Clough said that Mr. Webster had been granted an easement and that his side of the building was an improvement, but from Mr. Clough's side it was not an improvement because he lived on the other side of the street in the Historic District where they could not move their house back or install a driveway or add parking. He said there was full parking on his street, and if the Planning Board granted the approval, it would be in contrast to the applicable law and would make the quality of life and parking situation terrible. He asked them to consider their problem in terms of getting the City to correct their mistake and, instead of looking at a piece of paper that said there were 4 units, to go inside the building and do a study to prove whether there were indeed four units under New Hampshire law.

Chairman Ricci again called for third and final time speakers again. Seeing none, he closed the public hearing.

## **DISCUSSION AND DECISION OF THE BOARD:**

### **Conditional Use Permit:**

Chairman Ricci asked for a motion on the Conditional Use Permit application to add a gravel parking area of 550 s. f. of impact to the tidal wetland buffer. Mr. Allen made a motion to grant Conditional Use Permit approval as requested. Vice Chairman Blenkinsop seconded the motion.

The motion to grant Conditional Use Permit approval passed unanimously.

### **Site Plan Review:**

Chairman Ricci asked for a motion for Site Plan Approval for the conversion of the 4-unit residential building, demolition of the rear additions and the construction of a new 2-story, 450 s. f. rear addition.

Mr. Taintor recommended that they first vote on accepting the application as complete.



Deputy City Manager Allen made a motion to accept the application as complete. Mr. Rice seconded the motion. The motion passed unanimously.

Deputy City Manager Allen made a motion to grant Site Plan Approval with the stipulation from TAC about incorporating the maintenance plan for the condominium dock rain garden. Vice Chairman Blenkinsop seconded the motion.

The motion to grant Site Plan approval with the following stipulation, passed unanimously.

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1. The rain garden maintenance requirements, as shown on Sheet C-2, Landscape Plan, shall be included in the property Condominium documents.

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G. 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). (This application was postponed at the July 18, 2013 Planning Board meeting)

Chairman Ricci read the notice into the record.

**SPEAKING TO THE APPLICATION:**

Jeff Clifford of Altus Engineering representing Aland Realty Group and Chris Erickson, applicant, and Bill Bartell, of C. J. Architects.

Mr. Clifford stated they had gone through the HDC process and the Conditional Use Permit process and they now wanted to move forward with Site Review.

He showed the plan for 133-135 Market Street, the existing building and existing site and the proposed building and proposed site. They provided an easement plan required for the project and were making up for easements that were never codified for sewer lines that went through the site. There was an existing sewer line for the Moffatt Ladd House and their building tied into that line and was acceptable to DPW since it went into a trench on Market Street. They provided an easement for that line, which will be accessible to the City and met the DPW requirements. There was also a force main and a gravity sewer going through the property that had no easement, so part of the project was to create an easement that would include the area encompassed by the 15' private way on the Ceres Street Extension and also another wedge to pick up a portion of the force main that was outside the Ceres Street right-of-way. Another easement was for a drain line that they would extend from the existing catch basin that would eventually be replaced because it is deficient and extend a drain line into their property so that would be an easement between them and the Moffatt Ladd property.

The utilities easement would be power and communication lines. One line was going underground and would have an easement and a connection onto a property. There would be a public utilities easement for a buried line along the side of the building. They had a preliminary easement plan but would have a final plan to meet the recommendation made by Mr. Taintor to the Board.

Mr. Clifford talked about the width of the passage between the brick building and the gate. He showed the property line and the 15' right-of-way on the Ceres Street Extension. They agreed to put in a brick walkway to meet the City standards that was flush to the pavement so vehicles would not be affected. The Fire Department had a concern and had emailed the Applicant before the last public hearing on July 18. The Applicant met with the Deputy Fire Chief and produced another plan that the Deputy Fire Chief agreed with and signed.

The last item Mr. Clifford addressed was the DPW concern with the design of the drainage sewer that went through the building, and they decided to simplify the support system and support it with stone, which satisfied the DPW.

Mr. Clifford talked about other required approvals. One was that the project was within the 250' Shoreland Protection Zone. He spoke to the New Hampshire DES about it, and under the current regulations, and because they're going over 30% impervious for a total of 88% impervious, they asked for a waiver and DES required that they have a management plan that would not concentrate runoffs or contribute to erosion. They did not have to deal with infiltration because it had been discouraged by the DPW due to separation of soils or soil next to housing and buildings. As a result, they preferred not to do an infiltration scenario on the project. Mr. Clifford pointed out some of the actions they were doing that were beneficial to stormwater issues included the extension of the drain line and fixing the catch basin that may benefit the public because it has a pipe coming from a public street. They were also putting in a small catch basin to correct the ponding so it would not ice up. They were taking 8 existing parking spots and eliminating them so drippage from cars would not occur. He felt that eliminating all those issues and having underground parking would be a significant public benefit. He showed green space on the plan along with a depressed area for the roof runoff to slow down the storm water.

Vice Chairman Blenkinsop asked what the TAC Stipulation #9 height resolution was. Mr. Clifford said that it went to the HDC and Mr. Erickson could discuss it because he was part of the HDC process. He did say it had been approved under the HDC Conditional Use Permit requirement.

Vice Chairman Blenkinsop asked if it was under the new standard.

Mr. Taintor said it was approved under the ordinance that was referred to them by the City Council..

Vice Chairman Blenkinsop wanted to ensure that the stipulation had been addressed. Mr. Taintor said they did get a Conditional Use Permit and did not have to worry about the TAC stipulation.

Chairman Ricci asked about the request for a waiver from the Planning Board on the DES requirement. Mr. Clifford told him the waiver would be from DES and not through the City, and it had to do with the added impervious.

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

Christine Davidson of Maplewood Avenue said she read that the building material will be water-struck bricks. She thought that would look old fashioned. She commended the architects for planning that, but on her building, the paint would have to be stripped off and repainted. If that were expensive to do, she could understand if they just added another layer of bricks. She said the problem she had with the new building was its protrusion on Ceres Street. She could see how the protrusion would provide a

pleasant place to work, but it did not go with that section of the waterfront and the other buildings. From the Dolphin Striker restaurant down along Ceres Street, the buildings were old and historic, and suddenly this new 'ugly' yellow-being painted brick building with the 'bulge' would stand out. She also thought the height of the building should be lowered by a story because it did not fit the design uniformity in that area. She hoped the Planning Board would strongly recommend that the bulge be reconsidered and not added to the building.

Duncan McCallum of 536 State Street said he knew that most of his concerns should be addressed to the HDC. He was astounded that the HDC had approved the project but he would make his arguments anyway. He felt that the project was wildly out of character with the surroundings, and especially the historic old-time buildings directly across the street. The protrusion over Ceres Street was obtrusive, and the building was too massive and tall. He had told the HDC the same thing via a letter because he had not been able to attend their meeting. Additionally, he said the developer would be wiping out more green space than he would be creating. In closing, he said the new building did not belong on that street and would change its historic character. Whether his arguments were better addressed to the HDC or to the Planning Board, he was making them anyway and he urged the Planning Board to disapprove the project.

Clare Kittredge said that she felt it was an exercise in futility since the HDC had already approved the project, but she felt that she owed it to the Waterfront district to appeal the approval. She said the building was too big and not aesthetically pleasing enough to add to Ceres Street. New buildings should contribute and she said this building did not contribute a thing. The tourists would not be snapping photographs unless they did not know any better. The building would block more interesting views, like the salt pile, and it made a mockery of the new height limit. She thought it would continue to chip away at what was left of the wonderful historic, antique waterfront, making the waterfront look like a cliff face from the water.

Chairman Ricci called for additional first time speakers. He then called for second and third time speakers. Seeing none, he closed the public hearing.

#### **DISCUSSION AND DECISION OF THE BOARD:**

Vice Chairman Blenkinsop made a motion to determine that the application was complete according to the Site Plan Review Regulations, and to accept the application for consideration. Mr. Allen seconded the motion.

The motion to determine that the application as complete and to accept it for consideration passed unanimously.

Vice Chairman Blenkinsop made the motion to grant Site Plan Approval subject to the 5 stipulations. Deputy City Manager Allen seconded the motion.

Mr. Hopley said he wanted to add a sixth stipulation, which was to get a waiver from DES. Vice Chairman Blenkinsop said that was fine. Deputy City Manager also was fine with that.

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

Conditions Precedent (to be completed prior to the issuance of a building permit)

1. The applicant shall record a notice of voluntary lot merger.
  2. The applicant shall amend the plan set by inserting the revised Sewer Trench Detail and adding a note stating that the garage will be heated. If the garage will not be heated, the applicant shall work with DPW on an alternative design that is acceptable for unheated space.
  3. The applicant shall submit a final easement plan and deeds for all existing and proposed underground utilities crossing the applicant's property or serving the proposed development (including such easements on adjoining parcels) for review and approval by the Legal and Planning Departments, to be included in the final plan set.
  4. All utility easements identified above shall be recorded at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.
  5. The applicant shall obtain the required Shoreland Impact Permit permitting from the NH Department of Environmental Services or an urbanized exemption in coordination with the City Council as required under the State Shoreland Water Quality Protection Act (RSA 483-B).
  6. The applicant shall prepare a Construction Management & Mitigation Plan for review and approval by the City's Legal and Planning Departments.
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H. 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 4,400 s. f. addition to an existing sales & service building and vehicles display areas along the Spaulding Turnpike and Arthur Brady Drive, 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 lies within the General Business (GB) District. (This application was postponed at the July 18, 2013 Planning Board meeting)

Chairman Ricci read the notice into the record.

**SPEAKING TO THE APPLICATION:**

John Lorden of MSC Engineers, Stuart Wittcher of Wittcher Builders and Peter Loughlin, Attorney were present.

Mr. Lorden said there were two lots, the existing Portsmouth Ford lot on 400 Spaulding Turnpike and the 450 Spaulding Turnpike lot. The 450 Spaulding Turnpike lot is the former Enterprise Rental Car lot and is now used for Portsmouth Ford's vehicle display parking. In 2011, Mr. Lorden said they had the approval to demolish the old building on 450 Spaulding Turnpike and replace it with the new building. Consequently, they took down the building, the sidewalk, the utilities, a shed, and some overhead wires. He said no other work was planned as part of that approval and that all work shown on his current plan would supersede the previous plan.

The new proposal is for a 4400 s. f. addition to the existing building. It will be customer-focused with service drive-through lanes, an improved customer waiting area, a new vehicle delivery area, and an additional showroom. There will be extensive façade improvements across the whole front, with a tower in the middle for a main entrance. The proposal encompasses two lots that the Applicant wants to merge to eliminate 6 of the 20 easements on the site. There will be 109 spaces for vehicles and 105,000 s. f. of display area for vehicles. All line spaces and drive aisles will conform to site

regulations. They plan to seal-coat the entire lot and re-stripe the parking spaces. They will maintain circulation around the building and will keep the 3 access points. There will be no change to lighting, grading or drainage patterns, or site utilities. The utilities for the proposed addition will come through the existing building. The large gravel area will be replaced by loam and seed and they will expand the horseshoe area with loam and seed as well as a small pocket of landscaping against the building. They will reduce 7,000 s. f. of impervious with landscaped islands. As part of the TAC review, they will place large boulders to discourage parking within the wetland buffer, which this will avoid the Conditional Use Permit.

Vice Chairman Blenkinsop asked what part of the tower would be internally illuminated. Mr. Lorden said it would not be illuminated at all, that only the Ford logo section and the new signs would be internally illuminated.

Chairman Ricci 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.

**DECISION OF THE BOARD:**

Mr. Rice made a motion to grant Amended Site Plan Approval with stipulations as articulated in the Planning Department memorandum. Vice Chairman Blenkinsop seconded the motion.

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

Condition Precedent (to be completed prior to the issuance of a building permit)

1. The applicant shall record a notice of voluntary lot merger, to merge Map 238 Lot 1A with Map 238 Lot 2.

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**III. PUBLIC HEARINGS – NEW BUSINESS**

*The Board's action in these matters has been deemed to be quasi-judicial in nature.  
If any person believes any member of the Board has a conflict of interest,  
that issue should be raised at this point or it will be deemed waived.*

A. The application of **Eugene C. Hersey, Owner**, for property located at **36 Dodge Avenue**, requesting Preliminary and Final Subdivision Approval to subdivide one lot into two lots with the following: Proposed Lot 1 having 20,000 ± s. f. and 108.19' of continuous street frontage on Dodge Avenue and Proposed Lot 2 having 21,092 ± s. f. and 50.26' of continuous street frontage on Dodge Avenue, and lying in a district where a minimum lot area of 15,000 s. f. and 100' of continuous street frontage is required. Said property is shown on Assessor Plan 258 as Lot 37 and lies within the Single Residence B (SRB) District.

Chairman Ricci read the notice into the record.

Bernie Pelech, Attorney, representing Eugene Hersey, Owner, presented, and Steve Oles of MSC was present.

**SPEAKING TO THE APPLICATION:**

Attorney Pelech said they were subdividing an existing lot into two lots. He explained that it was originally two lots, but Mr. Hersey had merged them. They applied for and received ZBA approval with variances to re-subdivide the property into two lots. He mentioned that Steve Oles from MSC, who had done the plan, was also present if the Board had questions for him.

Chairman Ricci 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.

**DECISION OF THE BOARD:**

Mr. Hopley made a motion to grant Preliminary and Final Subdivision Approval subject to the three stipulations of monuments, GIS, and recording that were in the memorandum. Deputy city Manager Allen seconded the motion.

The motion to grant Preliminary and Final Subdivision approval passed unanimously, with the following stipulations:

1. Property monuments shall be set as required by the Department of Public Works prior to the filing of the plat.
2. GIS data shall be provided to the Department of Public Works in the form as required by the City.
3. The final plat shall be recorded at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.

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C. The application of **Public Service Company of New Hampshire, Owner**, for property located at **280 Gosling Road**, requesting Site Plan Approval to expand the existing gravel substation area by 44,000 s. f. to construct a capacitor bank, fencing, retaining wall and relocation of the existing asphalt driveway, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 214 as Lot 2 and lies within the Waterfront Industrial (WI) District.

Chairman Ricci read the notice into the record.

**SPEAKING TO THE APPLICATION:**

Patrick Crimmins of Tighe & Bond and PSNH representatives were present.

Mr. Crimmins said the project is an expansion to the existing substation located at the end of Gosling Road. They will expand the existing gravel area substation by 44,000 s. f. to construct a capacitor bank. It will require extending the existing fence around the new expansion and constructing a retaining wall. An existing driveway provides access to PSNH trucks, and they will relocate the driveway so that the trucks can maintain access. There are existing dumpsters and storage containers sporadically located throughout the site, and they will relocate them to a gravel pad. The project will require relocation of an existing water line that feeds as a hydrant and comes through the substation, and they will relocate it down the new driveway. The drainage patterns and the runoff from the

driveway will be collected in a yard drain and into a swale where it was previously discharging, and there is some under-drainage below the existing substation as well. The project itself is resulting in a net loss of impervious area of 3,200 s. f.

Mr. Rice said that there was gravel, pavement and grass there currently, and asked if it would be all gravel when it was completed. Mr. Crimmins said it would be all gravel, but the driveway would be paved.

Mr. Rice asked what the existing driveway's material was. Mr. Crimmins said it was paved as well but it would be larger, so it would be repaved.

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.

**DECISION OF THE BOARD:**

Vice Chairman Blenkinsop made a motion to grant Site Plan Approval as presented. Mr. Hopley seconded the motion

The motion to grant Site Plan approval passed unanimously.

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D. The application of **233 Vaughan Street, LLC, Owner**, for property located at **233 Vaughan Street**, requesting a second one-year extension of Site Plan Approval which was granted by the Planning Board on May 20, 2010 and amended on August 18, 2011. Site Plan approval was granted to construct a 4-story, 10,905 s. f. mixed use building, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. The first one year extension was granted on August 16, 2012. Said property is shown on Assessor Map 124 as Lot 14 and lies within the Central Business A (CBA) District, the Downtown Overlay District (DOD) and the Historic District.

Chairman Ricci read the notice into the record.

**SPEAKING TO THE APPLICATION:**

Present were: John Bosen, Attorney, representing the Applicant, Andrew Livingston and Andrew Cole, Members of 233 Vaughan Street, John Chagnon from Ambit Engineering and Mr. Spitzer from Chinburg Builders.

Attorney Bosen said the Planning Board had previously granted Site Plan Approval for construction of the 10,905 mixed-use building. Due to the recession, however, the building did not get built as originally planned. On August 16, 2012, the Planning Board granted the first extension of the Site Plan Approval, with 3 stipulations: 1) if the construction was not underway by October 1, 2012, the Owner would stabilize the site with loam and seeding. The Owner did stabilize the site by installing a construction fence around the property to prevent vehicles and pedestrians from accessing the site. The majority of the site had topsoil and vegetation on it, but the loam and seeding did not get done.

The 2nd stipulation was that the Owner extend the Site Review Agreement and Bond and that was done.

The 3<sup>rd</sup> stipulation was that if the Applicant did not meet those requirements, the approvals would not be valid.

In light of the loam and seeding stipulation not being met, Attorney Bosen requested that the approvals be extended. He said the recession was over, they had tenants for the building, they had funding from the Provident Bank, and they had the builders. Those three elements did not exist when the original approval was granted, so, first and foremost, he was requesting extension of the Site Plan Approval for the entire project. Second, he was asking that the Planning Board rescind Stipulations #1 and #3, which appeared in the Planning Board meeting minutes relative to the Applicant's requirement to loam and seed the site. Last, he noted that they had gone before TAC on July 30 and TAC had recommended the approval of the requested extension with a few stipulations, which they had agreed to.

Mr. Gladhill asked why the property was not loamed and seeded. Attorney Bosen said he did not want to make excuses but there had been some misunderstanding with respect to what was required to stabilize the site. The Applicant thought that fencing was sufficient. Attorney Bosen said at that time, the Applicant was trying to get financing and find tenants and he always thought they were just around the corner from being able to start the project. Rather than incur money that was difficult to raise for loaming and seeding, they thought they would just go ahead with the project but that did not happen.

Chairman Ricci 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 asked Mr. Taintor about the vote to rescind the Planning Board recommendation on Stipulation #3. He said that the Applicant was close to moving forward with the project, but if for some reason it did not move forward, he asked if they could amend the plan instead of rescinding it, from a date further out than October 15, 2012, to October 15, 2014. That way, the stipulation would still be there and the Applicant would hopefully meet the requirement. Mr. Taintor said they should make it October 2013.

Vice Chairman Blenkinsop made a motion that they amend the Planning Board Stipulation #3 from the Site Plan Approval granted on August 16, 2012 and the amendment would be that the date be changed to October 15, 2013.

Mr. Hopley said the date should be key to that day's vote, a year from that day instead of October 15.

Deputy City Manager Allen felt they would want to stabilize the property so that there was no runoff. Mr. Tainter added that it should not look unsightly.

Vice Chairman Blenkinsop said it would be pointless to seed after mid-November, so his motion was to amend the Planning Board Stipulation #3 from Site Plan Approval granted on August 16, 2012 and amend the date to October 15, 2013. Mr. Taintor said it was actually Stipulation #1.

Vice Chairman Blenkinsop asked if the Applicant had complied with Stipulation #2. Mr. Taintor said it was unclear to him because the Planning Board had no records in their files about the extension of the bond. The Applicant said they did, but they did not forward the bond to the Planning Board.



Vice Chairman Blenkinsop asked if the Planning Board should be amending that and requiring that the Applicant forward it to them. Mr. Taintor said it might be easier to rescind the previous stipulations and combine Stipulations 1 and 3 together. If construction of the Approved Site Plan was not underway by October 1, 2013, the Owner would fully stabilize, loam and seed by October 15, 2013, otherwise the Site Plan Approval extension would be null and void.

Vice Chairman Blenkinsop asked about Stipulation #2, in that case. Mr. Taintor said the bond issue was so vague that they would have to come up with a brand new bond. He said it was all so old that they were essentially starting from scratch with a brand new Site Plan Approval. The previous Site Plan Agreement had also expired and they were two separate items, so they would have to be done all over again. He recommended not tying it to the bond but to the loam and seeding.

Vice Chairman Blenkinsop made the motion to rescind Planning Board Stipulation #3 from the Site Plan Approval granted on August 15, 2012. Mr. Allen seconded the motion, and it passed unanimously.

Vice Chairman Bleckinop made the motion to grant the Amended Site Plan Approval with the 3 stipulations listed as well as an additional stipulation that if construction under the Approved Site Plan was not underway by October 1, 2013, the Owner would fully stabilize, loam and seed the entire site by October 15, 2013. Deputy City Manager Allen seconded the motion.

The motion to rescind the Planning Board's stipulation #3 from the Site Plan Approval passed unanimously.

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

Conditions Precedent (to be completed prior to the issuance of a building permit)

1. The applicant shall coordinate with the Fire Department and Department of Public Works on the configuration of on-street parking in front of the building on Vaughan Street.
2. The amount of the contribution for the sewer manhole shall be subject to approval by DPW.
3. The applicant shall prepare a Construction Management & Mitigation Plan for review and approval by the City's Legal and Planning Departments.
4. That if construction under the approved Site Plan is not substantially underway by October 1, 2013, the property owner shall stabilize, loam, and seed by October 15, 2013.

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**IV. CITY COUNCIL REFERRALS AND REQUESTS**

- A. Request of Tom and Zelita Morgan to expand the Historic District.

Mr. Taintor mentioned that the City Council's request to expand the HDC was previously postponed from the July meeting to the August meeting, but due to the heavy workload, he asked if it could be postponed again to the September meeting to give people adequate time to work on it. Vice Chairman Blenkinsop made the motion to postpone the City Council's request to the September meeting. Mr. Allen seconded the motion, and is passed unanimously.

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**V. PLANNING DIRECTOR'S REPORT**

A. Update on 1390 Lafayette Road (former Yoken's site).

One of the big discussions regarding this site was how to deal with the traffic signals around the area as well as the accommodation for bicycles. They had a Conceptual Improvement Plan that Mr. Jeff Dirk presented to them and said it was possible to use bike sensors for signals and bike markings to show where the bikes should be for the sensors. However, NHDOT said they could not put the markings in the road. The Planning Board had several meetings with them and NHDOT agreed as an alternative to create a bike lane in front of the property on the westbound and northbound side of Peverly Hill Road. It was done, and Chairman Ricci approved it administratively with DPW.

Mr. Gladhill asked if the marking signs on Route 1 were on all of Route 1 or just the busy portion.

Mr. Taintor said it was just the portion of Route 1 in the area, not the downtown portion. The feedback he got was that NHDOT did not want to do it unless it was part of an overall plan for Route 1 and that they were generically opposed to anything that would indicate that a bike could share vehicle lanes on Route 1. So even if it was part of the overall plan, NHDOT would not approve it. Mr. Taintor thought that NHDOT may move in that direction in the future as Portsmouth got more bicycle-friendly.

B. Mr. Taintor also said he had scheduled Wednesday, December 4 for the Capital Improvement Plan Subcommittee Meeting. It was the earliest it had ever been scheduled, so he jokingly told everyone to plan ahead and start arguing who was going to be on that committee.

C. Chairman Ricci asked Mr. Taintor to give them an update on the RFP for the Master Plan.

Mr. Taintor said they had a couple of things going on. One, they had issued an RFP for the existing conditions of a section of the overall Master Plan for Housing and Economic Development and they were close to selecting a consultant for it. Second, they had just issued the RFP for the Bicycle and Pedestrian Master Plan and were hoping it would start within the next month. He believed it was a 9-10 month process. They would be starting an RFP for the full Master Plan shortly into 2014. He said they were trying to do all the existing conditions in-house and update them, and they would use a consultant for the policy and outreach pieces.

D. Mr. Taintor had two more items that he wanted to discuss. One was the Form Based Zoning; he proposed two Work Sessions, one on the 2<sup>nd</sup> Thursday in September and one on the 2<sup>nd</sup> Thursday in October. He said normally the Work Sessions would be on the 4<sup>th</sup> Thursday, but due to timing and trying to get it into the City Council for action before the end of the year, he wanted to schedule the Work Sessions on those two dates. The second item was the November 7 date for the public hearing. He said the room was not available, so he wondered if Wednesday, November 6 would work instead. He was told the room was not available then, so Mr. Taintor said he would work on another date.

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**VI. ADJOURNMENT**

Vice Chairman Blenkinsop made the motion to adjourn. Mr. Gladhill seconded the motion, and it passed unanimously.

Adjournment was at 10:55 p.m.

Respectfully submitted,

Joanne Breault  
Temporary Secretary for the Planning Board.

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