

MINUTES

**PLANNING BOARD
PORTSMOUTH, NEW HAMPSHIRE**

CITY HALL, MUNICIPAL COMPLEX, 1 JUNKINS AVENUE

7:00 P.M.

AUGUST 21, 2014

MEMBERS PRESENT: John Ricci, Chairman; John Rice, Vice-Chairman; Jack Thorsen, City Council Representative; David Allen, Deputy City Manager; Robert Marsilio, Building Inspector; William Gladhill; Colby Gamester; Elizabeth Moreau, Michael Barker, and Jay Leduc, Alternate

MEMBERS EXCUSED: Justin Finn, Alternate

ALSO PRESENT: Rick Taintor, Planning Director; Jessa Berna, Associate Planner

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Chairman Ricci welcomed new Planning Board Member, Robert Marsilia, Building Inspector and Jessa Berna, Associate Planner.

I. APPROVAL OF MINUTES

1. Approval of Minutes from the March 20, 2014 Planning Board Meeting – Unanimously approved.
2. Approval of Minutes from the April 3, 2014 Planning Board Meeting – Unanimously approved.

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II. CAPITAL IMPROVEMENT PLAN – INFORMATIONAL PRESENTATION

Mr. Taintor asked Juliet Walker to do a presentation tonight. As background, every year the Planning Board is tasked with preparing the CIP and presenting it to the City Council. They thought it would be a good idea to give some background to the new board members and to the public.

Ms. Walker stated they have a legal basis for doing the CIP plan and it is a Planning Board document. It supports their responsibility of the Master Plan. There are different components but it is basically a time table to accomplish needed improvements on a timely basis and it helps plan for the future. It also helps plan for intra-structure improvements within the City.

It provides a complete picture of the City’s growth needs. It establishes priorities and helps reduce fluctuations in the tax rate, it helps balance use of funding resources, it discourages piece meal improvements, coordinates agencies and departments, informs tax payers of future improvements, why the money is being spent and encourages public input.

CIP projects include land acquisitions, construction or expansion of new facilities, improving facilities under \$50,000, planning studies, equipment that cost more than \$50,000 or has a lifespan of more than 5 years, and the replacement and purchase of vehicles.

A capital improvement is a major expenditure that is infrequent or non-occurring. The Master Plan process begins in August and is wrapped up just before the budgets are finalized in July. They first circulate a request to department heads and in November the Finance and Planning Departments will consolidate all information and draft the CIP Plan. The CIP sub-committee will meet to review the department requests and finally the Planning Board will adopt the CIP and recommend its acceptance to the City Council.

All proposed projects are submitted by City departments. A new project request will include a clear statement, its cost and implementation schedule. They will also review current projects underway or not yet started and determine if they are still on schedule.

When staff is asked to evaluate projects they are asked to consider certain criteria to help determine whether they are included in the CIP and how they are prioritized.

How the project will be financed is the considered next. There are various sources of funding (general fund, federal and state grants, general obligation bonds, revenues from parking, water and sewer, revolving loan fund).

It is stipulated in the City Charter that the CIP is tied to the annual budget. The City Council will hold a second public hearing and adopt it for consideration.

Chairman Ricci stated they will be looking for Planning Board volunteers in November to sit on the CIP sub-committee. He has always found it to be a very interesting exercise.

Ms. Walker stated this information is on the Planning Department website.

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III. DETERMINATIONS OF COMPLETENESS

A. Site Plan Review

- 1. 333 Borthwick Avenue – Ms. Moreau made a motion to determine that the application is complete according to the Site Plan Review Regulations and to accept it for consideration. Mr. Rice seconded the motion. The motion passed unanimously.

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IV. PUBLIC HEARINGS – OLD BUSINESS

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

A. Proposed City of Portsmouth Bicycle and Pedestrian Master Plan.

Ms. Walker explained they had opened this public hearing at their last Planning Board meeting. They have consolidated all sections of the plan into one document and they are looking for any further input. This has also been posted on the Planning Department website since June and there has been a lot of public interest.

The Chair called for public speakers. Seeing no one rise, he closed the public hearing.

Chairman Ricci stated that he felt this was a great document and staff did a great job putting it together.

Councilor Thorsen indicated that the City Council had some questions regarding this document and he asked if any changes have been made. Ms. Walker confirmed that this document has been modified to include those comments and they plan to do another presentation to the City Council after the Planning Board's adoption.

Ms. Moreau made a motion to adopt the Bicycle and Pedestrian Plan. Mr. Rice seconded the motion.

The motion to adopt the Bicycle and Pedestrian Plan passed unanimously.

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B. The amended application of **2422 Lafayette Road Associates, LLC**, for property located at **2454 Lafayette Road (Southgate Plaza)**, requesting Amended Site Plan Approval to demolish 21,022 ± s.f. of existing retail space, add 11,000 ± s.f. footprint of new retail space to the existing retail/restaurant strip building, add a rain garden at the rear of the site, to replace the previously approved porous pavement in the rear of the site with a gravel pad for a garden center, and make related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 273, Lot 3 and lies within the Gateway District. (This application was postponed at the June 19, 2014 Planning Board meeting.)

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Attorney Bernie Pelech appeared on behalf of the applicant. With him was Patrick Crimmins of Tighe & Bond and Doug Richardson from Waterstone. Attorney Pelech indicated this has been in the works for a long time. As recently as today, there was a meeting and they have agreed on all of the conditions included in the Staff Memorandum. They will be posting a \$15,000 bond for mitigation for the additional traffic because they plan on coming back to the Board for another proposal on the site.

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

DISCUSSION AND DECISION OF THE BOARD

Mr. Taintor stated that the stipulation under discussion was the \$15,000 contribution for traffic mitigation and because there is going to be additional development on the site which will likely require additional traffic improvements, they didn't see where it made sense to use funds now that would just be changed next year. He felt a two year bond for the \$15,000 would allow them to finalize the next phase of the development. He is not sure they need to make a change in the wording of the stipulation as long as it is understood that it will be a bond instead of cash.

Deputy City Manager Allen made a motion to grant Amended Site Plan Approval with the stipulations as presented by TAC, including the bonded \$15,000 for the traffic light improvements. Ms. Moreau seconded the motion.

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

1. The applicant shall replace the culvert across the Water Country drive with an adequately sized culvert during Water Country’s off season, and repair the drive.
2. The applicant shall dredge and replace the swale on Constitution Avenue to drain water off site to the satisfaction of the City of Portsmouth Department of Public Works.
3. The site plan shall show a minimum of 7’ of sidewalk width along the new retail building.
4. The driveway paving shall extend out to Constitution Avenue.
5. The applicant shall make a \$15,000 contribution to the NHDOT for mitigation for additional traffic, as directed by the Director of Public Works.

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V. 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. Proposed rezoning of the following lots from Industrial (I), Office Research (OR) or Municipal (M) to Character District 4 (CD4):
- Assessors Map 163, Lots 33, 34 and 37.
 - Assessors Map 165, Lots 1, 2 and 14.
 - Assessors Map 172, Lots 1 and 2.
 - Assessors Map 173, Lots 2 and 10.

and including Cate Street between Hodgson’s Brook and Bartlett Street.

Mr. Taintor stated this request came out of a couple of different sources. The City Council voted to ask the Planning Board to look at rezoning all of the land on the east side of the by-pass from the traffic circle down to Islington Street which is a mix of different districts which is limiting redevelopment. The parcels that exist between Hodgson Brook and the rail road tracks and the by-pass and Bartlett Street are up for sale. The proposal that Planning Staff made was rezoning to CD-4, somewhat like the old CBA. A map was displayed showing the area they are looking at. Zoning districts that currently exist are Industrial, there is a small parcel of city owned land at the bend on Cate Street, on the other side of Cate Street is office research which has been a very difficult district for the City. The Character Based Zoning has three different types of districts. CD-5 is the core of downtown, CD-4 is a slightly lower scale with 3-4 stories but still very urban, CD-4L which is mixed residence office.

They are proposing the Character District 4 which would provide for a lot of building coverage, buildings close to the street with a scale that is typical to the downtown area. The CD zoning is very visual, very oriented on building design and location with respect to the street. The uses and dimensions have significantly changed in this area from what the existing Industrial District is. Mr. Taintor reviewed the uses that are currently allowed in the area but would not be allowed if they rezoned it CD-4. and the A table was created showing the uses that are currently allowed vs. what would be allowed in CD-4. This would reduce the maximum building height from 70’ to between 40’

– 45', increase building coverage to 90% of the lot, the building footprint would be a maximum of 10,000 s.f., open space requirement is reduced, and there is a requirement that when you create new streets the maximum perimeter of the block cannot exceed 1,000'. This would allow a much wider range of uses and a more flexible set of dimensional standards.

They have received two communications from property owners in the district. One has indicated support with a request to relax the building footprint. The owner of the majority of the land has proposed the creation of a new zoning district. The proposals are to eliminate the 10,000 s.f. maximum building footprint requirement and to allow the building height to increase to 50' as of right and up to 60' if there is a work force housing component comprising at least 10% of the units.

A Work Force Housing exhibit was provided to the Board explaining what State Law says about Work Force Housing. The maximum affordable purchase price in Portsmouth is \$284,000 per unit and the maximum rental price, including utilities, is 1,140 per unit.

Mr. Taintor indicated there are a number of choices before the Board. They can vote to keep the zoning industrial, go to the general urban district CD-4, or go to something new. They also have to decide what height limit and building coverage is appropriate. If they decide to go significantly different than what was advertised, they should probably postpone so they can re-advertise something more accurate.

This has been placed on the City Council Agenda for a second reading public hearing on September 22th.

Mr. Gladhill asked if the front lot line of 0-10' for CD-4 was a safe condition on by-pass. Mr. Taintor felt that was a good point. He added that they are proposing to create a new road connection from Borthwick Avenue to the main street in this area. They might want to have a greater set back along the by-pass.

Chairman Ricci would like to see a combination of commercial/residential to have a good mix. That would assure that it is not a ghost town in either the daytime or nighttime and they could share parking.

Mr. Rice felt they have some industrial uses that will be phased out and he is all for heading in this direction but asked if there is still plenty of land in the City where these uses will go. Mr. Taintor felt that the Pease Tradeport is a huge reservoir of land for these uses and they also still have the Lafayette West Industrial Park and Constitutional and Heritage Drive area. Chairman Ricci agreed and added that a good thing about those areas is that you don't have to go through town to get to them.

Ms. Moreau agreed with Gladhill regarding the properties facing Route 1 and felt they should be at least 10' from the roadway. They could make some exception for them. She likes the concept of this zoning for this area. She would not be in favor of going past the 45' height and felt it would be out of place to have anything taller.

Mr. Taintor gave some background on the setbacks. They looked at this area a couple of years ago and had been looking at dividing the area into three separate areas, one for residential, one for retail and one for industrial. Because one person now owns almost all of the land, they were trying to keep it one district. He agrees the existing setbacks from the highway would be better. They want to give as much flexibility to the property owner as they can.

Ms. Berna asked if the property lines start at the by-pass road or is there an easement line. Mr. Taintor confirmed there was no easement.

Mr. Taintor thought they could put together a list of issues following the public hearing and they could vote to make a recommendation to the City Council with stipulations. If the issues are fairly broad and too much to do in one meeting, they could postpone and refer this to the Planning Department for a revised presentation with some guide to what they want to see and if they are looking for something very different they would have to postpone and re-advertise.

Mr. Gamester also agreed with the setback issues. This area could probably sustain something more than 10,000 s.f. and the 45' height limit. The Button Factory and Eldredge Park are fairly tall and they are separating the few residential house with the brook. This could be its own village and it could support something taller and bigger. The Frank Jones Conference Center building has a 29,000 s.f. footprint.

Deputy City Manager Allen was interested to hear what comes out of the public hearing but his initial thought is "the devil is in the details" and he would not want to pass this along to the City Council without ironing everything out.

Councilor Thorsen felt some sort of postponement to get the details together might be a good idea. This is a very important piece of property and they should encourage as much input as possible. They started the process looking at this property in a forward looking manner and that is what the Planning Board could help with. The City Manager brought back the idea of making it a CD-4 as it best fit any other zoning designation. He had two reservations about CD-4. He doesn't think the height issue is as important as downtown and this area has a different character. The Islington side is another area in conjunction with the Frank Jones area that is likely to be developed soon. They need to get this right before things start to happen. He thought CD-4 was a good way to start although he had some reservations. They are going into a character based zoning exercise which will adjust all of those things. When they are developing the character based zoning aspect of these properties, that is a good time for developers to come back and let them know what does and doesn't work. CD-4 is the closest thing they have in their tool box and it will get modified anyways. Because of the importance, he encouraged the Planning Board to think this one through, come up with a list of issues of zoning changes and create the best plan possible.

The Chair opened the public hearing and called for speakers.

Attorney Bernie Pelech thanked those who are suggesting postponement. It took months to introduce the original CB districts and it was tailored to meet the needs of the downtown. This is a completely different area. He is present on behalf of Portsmouth Land Acquisitions and believes an adjusted CD-4 would work. He has no problem with the by-pass setback. The original CD-4 district was created for a much larger area, in a different section of town.

Chris MacInnis stated he was involved with a portion of the property consisting of the Frank Jones parcel. He felt CD-4 would result in a drastic decrease in property valuation. He doesn't think the property owners should be ignored and not included in the rezoning procedure. This could be a gateway to the City from the south. The City has a chance to increase the vitality of this hub of the City. He urged the Planning Board to consider the proposed CD-4B and postpone tonight.

Lee Gove, of Morning Street, attended a session at the library a while back. He asked if the road was a given. Mr. Taintor responded that under character zoning, you need to have a development plan and that would be part of the development process. The property could not be developed without that road and is a major part of this plan. He agrees that “the devil would be in the details”. Mr. Gove asked what would happen with the City parcel. Mr. Taintor stated that the concept would be a land swap where the developer would give land to the City for a new public road and the City would provide the land to the developer.

Mike Teal, of 767 Islington Street, is an abutter. He thinks the idea of developing and rezoning this area is worthy of a lot of discussion. He does not like to hear them talk about higher building heights and bigger footprints. One building, that predates everything else, should not influence the new setbacks and height.

William Pannella, of 40 Cottage street, agreed with Mr. Teal. He bought his home a few years ago and likes his neighborhood. He wants them to reconsider the setbacks and heights and balance things better. He is for redevelopment and doesn't like what he sees on Cate Street. It is an old neighborhood.

Dave Gross, of 201-235 Cate Street, agreed with the previous speakers. From the salon on Cate Street they look at nice trees. He doesn't like to hear them talking about 70' buildings. He would like to see a nice buffer area for the brook also. He thinks an air quality report needs to be done. He thinks it should be re-zoned and it could be a very nice area.

Paul Mannle, 1490 Islington Street. He believes this discussion is premature and this is not the time for discussion. Changing the zoning while 6 parcels are on the market is unfair to future owners. Mr. Taintor confirmed that the Department notified all owners and abutters. Mr. Mannle asked that the discussion be postponed to find out what the property owners want. The City should buy the parcels if they want to rezone them. He asked why this area wasn't considered as a parking garage by the City.

Seeing no further first time speakers, the Chair called for second time speakers.

Bernard Pelech did a review of the existing uses in the area and they are almost all commercial with 6 residences. CD-4 is supposed to support the character of its surroundings. He took Article 5 and made some changes to it to make this district more user friendly with Islington Street rather than downtown and he called it a CD-4B district. His clients have met with many developers who are interested in developing this area. Many are for mixed use buildings, including work force housing, with pedestrian pathways along the brook and a park. This can all work with some adjustments to the CD-4 district. He reviewed his proposed changes to the CD-4 district.

Rick Beckstead, of 1395 Islington Street, agreed with Attorney Pelech and felt this should be slowed down. He has lived his entire life in this town and he doesn't think the residents are being heard. He would ask the Board to postpone.

Seeing no further second time speakers, the Chair called for third time speakers.

Attorney Pelech hoped that the Board has heard what people have said tonight and they are convinced that more work needs to be done.

Seeing no further speakers, the Chair closed the public hearing.

Ms. Moreau made a motion to postpone this matter to a time indefinite. Deputy City Manager Allen seconded the motion.

Mr. Gladhill was agreeable to a postponement as long as they receive updates with feedback to keep the dialogue going.

Mr. Taintor stated they would have to re-advertise if they postpone indefinitely. They could recommend to the City Council that it was premature to go ahead with this. This will be part of the February charette. Maybe they would rather like to recommend against it to the City Council. If you agree with Mr. Pelech that they should be slowing down and include this in the normal process, which they were going to do anyways, they should probably recommend against. If they do want to postpone, he would want to know what they want to see in the next draft. Clearly there are very different positions coming from the public. Many feel they shouldn't go above 45' and they should look at larger setbacks, many feel it should be as dense as the downtown by allowing full coverage and going as high as the downtown. They need to be very clear on what they are proposing. The two clearest options for him is to recommend against adoption of rezoning at this time and one is to postpone but with some clear guidance to the Planning Department on what they would like to see changed.

Chairman Ricci would like to see an inventory of building height as they relate to TMS, the button factory, etc. The plan they were given doesn't show depth. He would also like to look at the square footage of the existing buildings. He thinks rezoning makes sense but at this point in time they do not have nearly enough data to modify it. He doesn't want to do a disservice to the old historic buildings around the site but he wants to make it as flexible as they can.

Mr. Rice asked if they might want to have a site walk. Chairman Ricci responded that his recommendation would be to report back to the City Council that they would not support this rezoning at this time and it would make sense to "get their boots on the ground".

Ms. Moreau felt that, after listening to people speak, they need a charette process to get this right and they need the data that they do not have. It's a 50/50 split for her whether to move it up to the sooner charette or to wait. Mr. Taintor stated that the north end charette is scheduled for November and are looking at dates in February for the Islington Street corridor. Chairman Ricci heard tonight that there will be enough changes that it may be a whole different document and they will have to re-advertise anyways. Mr. Taintor agreed.

Deputy City Manager Allen also agreed. The timing of the Islington Street charette is unfortunate but due to the work load on the Planning Department in getting the charette planned, working on the master plan and the CIP, and the intricacies to craft a new code, it does not allow them to schedule this earlier and still do it justice.

Mr. Taintor mentioned that the property owner always has the right to request a re-zoning through the City Council, who would then refer it back to the Planning Board.

Councilor Thorsen understands the desire to postpone, even indefinitely, as there is a lot they need to consider. He doesn't agree with sending back a recommendation against the ordinance and he would rather see a recommendation for an ordinance change with respect to CD-4 with several amendments or even if they recommended totally scraping CD-4 and starting all over. There has already been a City Council first reading. They can postpone as long as they are allowed to as far as the second

reading (120 days) and recommend that they postpone while they continue to consider the request up to sometime before the 120 days expires. He would prefer that action because he believes the sentiment of the Council is that it is worse to leave it as industrial and the City Council will just move ahead without any input from the Planning Board. He would much prefer to see the Board take some time, do a site visit, and make a list of amendments regarding CD-4 that make sense even if along side that is a big “or” statement that says or scrap CD-4 but still consider these things as necessary. He suspects an ordinance change is going to make it through the City Council with as much or as little Planning Board input as is made available to the Council.

Chairman Ricci asked Councilor Thorsen if he meant that the City Council would act on this proposal without the Planning Board support. Councilor Thorsen responded that they have already had first reading so they would have to do something. He is trying to avoid any difficulty with the process and the best way would be to recommend postponing to allow them to digest what they need to do rather than reject it and leave it in the air.

Mr. Taintor felt they have a timing problem. The City Council voted on July 14th and 120 days ends in mid-November. The City Council meeting is in the middle of November so they would have to go to the City Council for the October meeting, leaving just the September Planning Board meeting to make a decision. He hears what Councilor Thorsen is saying but confirmed that this area is scheduled for the February charette so it would only be six months.

Chairman Ricci felt that the Board was in agreement that they should slow this process down. Mr. Taintor does not think they are recommending against the ordinance but simply recommending against moving forward at this point.

Chariman Ricci felt they should report back that they support a zoning change but just not this zoning change.

Ms. Moreau also thought it would be good to add that they want to take more time with this.

Ms. Moreau revised her motion to report back to the City Council that they would like to move forward with a zoning change but not this specific zoning change at this specific time and they would like to slow the process down to allow more studying of the parcel and the parcels around it to make sure the correct zoning moves forward. Mr. Rice seconded the motion.

Councilor Thorsen stated it was never contemplated that this ordinance change would be the final version and they knew that CD-4 was not the exact solution but it was much better than industrial. He encouraged the Board to take that path.

The motion passed with an 8-1 vote, with Councilor Thorsen voting in the negative.

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B. The application of **John P. and Amy L. Sheehan, Owners**, for property located at **130 Aldrich Road**, requesting a Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within an inland wetland buffer to remove an existing garage and to construct a 24’ x 26’ garage, with 478 ± s.f. of impact to the wetland buffer. Said property is shown on Assessor Plan 153 as Lot 4 and lies within the Single Residence B (SRB) District.

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

John Sheehan, owner, stated he plans to demolish an existing garage that is falling over and construct a new garage. He would also be able to park in front of the new garage.

Deputy City Manger Allen asked why is the driveway next to a garage. The reason he mentions this is because he hates large curbcuts. It looks like they have a 30' curbcut, which is not a residential size curbcut.

Mr. Sheehan said he was going to move it back further. Deputy City Manager Allen asked if they are extending further into the buffer. He has a garage and a paved parking area.

Mr. Sheehan stated anything they are putting in new would be in front of the garage itself. With their limited amount of parking, and a handicapped brother living with them, it works out well for them.

Chairman Ricci said this was in the wetland buffer but the garage is getting bigger. Mr. Sheehan said they need that size to get a car in and open the doors. Chairman Ricci pointed out the criteria requiring it to have the least impact yet they are creating a bigger garage. He asked how this is having the least impact. Mr. Sheehan responded that he is replacing a 2-car garage with a 2-car garage that is bigger because cars are bigger now.

Ms. Moreau noted that the new garage is also getting taller. Mr. Sheehan said it is not a second story but enough room for storage of boxes.

Deputy City Manager Allen asked if the garage could be moved closer to their paved driveway. Mr. Sheehan said he is trying to stay within the curbcut they have in place. Deputy City Manager Allen felt he is expanding away from where the curb would be and the exhibit shows expanding all on one side. Mr. Sheehan said that his drawing is probably not a good representative and he is only adding 1' more to each side.

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

DISCUSSION AND DECISION OF THE BOARD

Ms. Moreau made a motion to grant Conditional Use Permit approval with the recommended stipulations. Councilor Thorsen seconded the motion.

The motion to grant Conditional Use Permit approval passed with the following stipulations, by a 9-2 vote (Deputy City Manager Allen and Chairman Ricci voting in the negative.):

1. The applicant shall use porous material for the expansion of the parking area beside the garage.
2. The applicant shall install and maintain a silt fence or other appropriate erosion control measure to protect the wetland adjacent to the site.

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C. The application of **Martha Stolzer, Owner**, for property located at **5 Pleasant Point Drive**, requesting a Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within a tidal wetland buffer to remove the front steps and asphalt walkway and construct a 6' x 20' covered porch, 25' long landscape retaining wall and porous walkway, with 845 ± s.f. of impact to the wetland buffer. Said property is shown on Assessor Plan 207 as Lot 32 and lies within the Single Residence B (SRB) District.

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Attorney Bernard Pelech state he was representing Martha Stolzer and Amy Dutton, the designer, was also present. They were before Conservation Commission earlier this month and they unanimously recommended approval. They asked them to submit a landscape plan to Peter Britz, which they have done. There were concerns that there was no landscaping between the house and the street so they provided this plan. All other issues were dealt with and it is a very minor proposal.

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

DISCUSSION AND DECISION OF THE BOARD

Deputy City Manager Allen made a motion to grant Conditional Use Permit approval. Mr. Marsilia seconded the motion. Mr. Marsilia talked to Peter Britz about this and it was unanimously approved by the Conservation Commission and he was very impressed with the planting plan.

The motion to grant Conditional Use Permit approval passed unanimously.

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D. The application of **Scott and Alexis Lang, Owners**, for property located at **400 F.W. Hartford Drive**, requesting a Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within an inland wetland buffer to add landscaping to the front and rear of the lot; replace the existing walkway with paving stones; and construct a two tier patio in the rear using paving stones, with 904 ± s.f. of impact to the wetland buffer. Said property is shown on Assessor Plan 249 as Lot 24 and lies within the Single Residence B (SRB) District.

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Scott and Alexis Lang, owners, were present. Mr. Lang stated that the rear of his property has wetlands that comes up 40' on their property. They are proposing changes to the immediate rear to the back of the house. They removed the deck several years ago and are replacing it with pavers for a surface patio. In the front, the brick walk is up against the house and they are moving it away to improve drainage.

Ms. Moreau noted a good sized tree in the back yard that is not on their concept drawing and asked if it is staying. Mr. Lang said he had no plans to remove any trees.

Ms. Moreau asked how close the actual wetland comes to the two tiered patio in the rear. Mr. Lang responded that it was 40' from the rear of the closest point. It would stop about 25' from the wetland.

Mr. Gladhill asked if they are doing an addition to the house also. Mr. Lang said they are not.

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

DISCUSSION AND DECISION OF THE BOARD

Ms. Moreau made a motion to grant Conditional Use Permit approval with the recommended stipulation in the Staff Memorandum. Mr. Rice seconded the motion.

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

1. The applicant shall install and maintain erosion control measures in accordance with the New Hampshire Stormwater Manual, Volume 3, Erosion and Sediment Controls During Construction (NH DES December 2003).

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Mr. Moreau made a motion to read Items E & F in together. Mr. Gamester seconded the motion. The motion passed unanimously.

E. The application of **Carol S. and Joseph G. McGinty, Owners, David P. Cavaretta, Owner,** and the **Frances T. Sanderson Revocable Trust and Lynn J. Sanderson Revocable Trust, Paul G. Sanderson, Trustee, Owners,** for property located at **300 Spinney Road, 342 Spinney Road and off Spinney Road,** wherein Preliminary and Final Subdivision Approval (Lot Line Revision) is requested between three lots as follows:

- a. Lot 6 on Assessor Map 169 decreasing in area from 29,969 s.f. to 28,313 s.f. and with continuous street frontage on Spinney Road decreasing from 150 ft. to 132.54 ft.
- b. Lot 5 on Assessor Map 169 increasing in area from 23,535+ s.f. to 24,734+ s.f. with 171.60 ft of continuous street frontage on Spinney Road.
- c. Lot 24 on Assessor Map 170 increasing in area from 180,500+ s.f. to 180,957+ s.f. with 139.06 ft. of continuous street frontage on Middle Road.

Said properties are located in the Single Residence B (SRB) District which requires a minimum lot size of 15,000 s.f. and 100 ft. of continuous street frontage.

F. The application of the **Frances T. Sanderson Revocable Trust and Lynn J. Sanderson Revocable Trust, Paul G. Sanderson, Trustee, Owners,** and **Spinney Road Land Holdings, LLC, Applicant,** for property located **off Spinney Road and Middle Road,** for Preliminary and Final Subdivision Approval to subdivide two lots into five lots with a new public right-of-way, with the following: Lot 5 on Assessor Map 167 having 263,937 s.f. (6.06 acres) and Lot 24 on Assessor Map 170 having 183,362 s.f. (4.21 acres), to be consolidated and subdivided into seven separate lots, including a public right-of-way, as follows:

- a. Proposed Lot #1 consisting of 15,121 ± s.f. (0.35 acres) and 114.71' of frontage on the proposed right-of-way.
- b. Proposed Lot #2 consisting of 15,432 ± s.f. (0.35 acres) and 103.10' of frontage on Middle Road.

- c. Proposed Lot #3 consisting of 29,511 ± s.f. (0.68 acres) and 100' of frontage on the proposed right of way.
- d. Proposed Lot #4 consisting of 29,475 ± s.f. (0.68 acres) and 100' of frontage on the proposed right of way.
- e. Proposed Lot #5 consisting of 16,075 ± s.f. (0.37 acres) and 100' of frontage on the proposed right of way.
- f. Proposed Lot #6 (non buildable) consisting of 209,762 ± s.f. (4.82 acres) and 66.30' of frontage on Thaxter Road.
- g. Proposed Lot #7 (non buildable) consisting of 106,549 ± s.f. (2.44 acres) and 82.11' of frontage on the proposed right of way.

Said properties are located in the Single Residence B (SRB) District which requires a minimum lot size of 15,000 s.f. and 100 ft. of continuous street frontage.

The Chair read the notices into the record.

SPEAKING TO THE APPLICATION:

Christopher Berry, of Berry Surveying and Engineering, appeared on behalf of the applicant, David Smith of Spinney Road Land Holdings, LLC. Also present was Paul Sanderson, Attorney John Springer and Christian Smith of Beal Associates.

This application was before the Board in the fall of 2013 and was asked to go before the TAC Committee for review. The main reason was the design of the infrastructure and the drainage system. They have been before TAC a number of time, they have reviewed the plans and have recommended approval. Utilities were modified. The largest item that came out of TAC was the stormwater analysis and a larger scope of review was requested. There is a large wetland area that sits in the middle of this project and a large amount of stormwater runs down through the site. The entire area drains down through land that is owned by Attorney Lyons and is discharged through a municipal drainage system. Because of stormwater impacts associated with projects of this size, the scope of the drainage study was extended and reviewed by an independent engineer for review. Underwood Engineers made a number of comments and they made the appropriate changes and TAC approved the final plans. One of the two major areas they are utilizing for off site mitigation are two raingardens in the center of the cul de sac.

One TAC concern was grading around the homes and driveways. Each home site is proposed to have infiltration systems on each site. The idea behind this is to capture the roof run off and infiltrate through a chambered system under the ground. The overall concern for the wetland was the flooding that occurs within the wetland system and the effect on Mr. Lyons and Mr. Green. The scope of the macro drainage analysis was to look at peak run off and geometric impacts. Through the mitigation proposed, all factors are better after the development of this site.

There were a number of discussions regarding sidewalks. They are now proposing a sidewalk. They discussed which direction the houses on Lot 1 & 2 should face and the final decision was to have one face Middle Road and one to face the proposed street. Driveway access would be taken from the proposed driveway.

The lot lines have been modified to be more linear. Originally they had one lot that was circumvented by Lot 4 being within Lot 5 and they revised that.

Legal questions about easements and documentation can be answered by Attorney Springer as he has been working with the City Legal and Planning Departments on those.

Mr. Gladhill asked if the house that now has a driveway off of Spinney Road will still retain it's Spinney Road address. Mr. Berry indicated that was not discussed. Mr. Gladhill appreciated having the house face Middle Road.

Mr. Taintor stated that the front door will still be on Spinney Road so the address will remain the same.

Mr. Marsilia asked if the chambers on the individual lots require maintenance. Mr. Berry confirmed that they will need to be cleaned out every so often. Every year after a certain number of rain events they are required to be inspected and an inspection report submitted. The individual homeowners are responsible for that. Mr. Marsilia asked how the City stays on top of that. Chairman Ricci said they could make it a stipulation.

Ms. Moreau felt it could be part of the homeowners association. Mr. Taintor was not clear on whether there will be a homeowners association. They initially thought the raingardens would be owned and managed by the homeowners but that is not clear either.

Attorney Springer clarified that they are proposing that this not be done by a home owners association but rather put it right in the deed. They haven't had a chance to receive feedback from the City yet.

Ms. Moreau asked if it will be in all of the deeds for all of the houses. Attorney Springer confirmed that was correct. Ms. Moreau said that the plans need to be updated as it states there will be a homeowner association.

Mr. Taintor said at TAC they had gone back and forth over whether the road and raingardens would be public or private. That is part of the complexity of what Legal and Mr. Taintor are going through. TAC recommends this be a public street and that the raingarden be public but they haven't figured out raingarden #2 yet.

Mr. Rice felt that the driveway from the circle on Lot #2 seems a little awkward. He asked how is there no setback from Lot 1 for that driveway.

Mr. Taintor stated for single and two family lots there is no setback in our zoning. That location of the driveway did come up at TAC and it was originally proposed to not be as close to the lot line but one member of TAC was concerned about the requirement of an easement. That is why the driveway was pushed to the side.

Chairman Ricci still has a lot of concerns. On Lot 4, what is important to him is not only the street but the grading around each house. The rear of the house is 12' from grade. He felt the note regarding fill was unacceptable. Second, there is a proposed grade 55 that does not tie back into the grade itself. Raingarden 2 from the street is about 6' deep and he wondered if they had any concerns about kids or safety. The end of the pipe goes over about 3' of elevation at the outlet into raingarden #2. It is just not graded correctly. On Lot #4 there is a proposed grade 51 which should be a 521. There are no spot grades on the front where it ties into Spinney Road. The existing grade on Lot 1 goes through the proposed house. He sees issues where the proposed grading does not work with how these houses will be built. There is a big thick dark line on Lot 4 that isn't identified. He has issues with grading as it related to existing and proposed. Whether this is in the middle of a field or off Spinney road, he

doesn't think a lot of those grades are going to work. He sees a lot of errors in the grading where they don't tie back.

Mr. Berry responded that if the Chairman feels more detail is required, he is willing to provide that. They always put existing grades going through proposed structures. They usually consider fencing over 6' but they can certainly take a look at the raingarden and consider a fence. The thick line is a proposed retaining wall that is identified on 101C in a blow up of that lot. Chairman Ricci would defer to the newest member that a retaining wall over a certain amount needs to be designed.

Deputy City Manager Allen asked Mr. Taintor to enlighten the discussion about raingardens as it sounded like there was still discussion about who will be responsible. He is only concerned given what happened at Laurel Court which has become a big problem for the City.

Mr. Taintor stated that the intent of TAC was that raingarden #1 would be publically owned and publically maintained. Raingarden #2 was going to be privately maintained with an easement for the City to maintain if necessary. They also have that language on the lots on Spinney Road as there is a small drainage spot they will need access to. Peter Rice was concerned about getting behind the house on Lot 4 to maintain the raingarden. The easements were to be worked out and clarified. Because of vacation schedules they just didn't have the time to get that done before this meeting. He has asked that this condition be addressed before the recording of the plan.

The Chair called for public speakers.

Attorney Peter Loughlin of Thaxter Road. His interest in this is not as an attorney but he is interested in purchasing the open space lot. He is in discussions with Mr. Smith and has signed a P&S. He provided photos to the Board. He has had a tree farm on this property since 1981 and has always been interested in purchasing this property. His goal is to keep it open. The neighbors have enjoyed the trails that he has maintained over the years. This has been an exhausting process and he hopes this will be the end of it tonight. He thinks it is a great subdivision with 7 lots within a mile of downtown Portsmouth. He is urging support and approval of the subdivision.

John Lyons, of 76 Fells Road. He has had the project reviewed by his own engineer and he is satisfied with the revised report and plans. However, in order for this to work, the raingardens have to be maintained. He does not have the proposal with the City. The City has done a great job putting the application through the process of drainage and stormwater treatment. Raingardens are very detailed and need lots of very specific maintenance. The drainage analysis was done on an assumption of the footprint of each building and driveways. Berry is in agreement that there be a provision in the deeds that if the homeowner wanted to expand the existing footprint they would have to have it reviewed by a professional engineer and a representative of DPW. He knows there is also a suggestion that if the Home Owners Association doesn't maintain the raingarden, the City would have to step in at the cost of the home owners.

Jerry Zelin, of 70 Kensington Road. He lives three lots in from the wetland. Many houses on this street suffer from wet basements. This wetland affects the water table on their lots. He echoes John Lyons and asked if maintenance and inspection of the raingardens are essential, how do they know whether that is being done on the proper schedule. He would ask that the owners of the properties be required to submit reports on a set schedule to the City confirming that they did the proper maintenance. His other question is that the deeds do not give the City the right to go onto the property

who has the right. If this is an encumbrance on the property through the deeds, that doesn't allow anyone from the public to enforce this maintenance.

Leslie Dolleman, of 257 Middle Road. The plan has consistently shown her property line, which abuts Lot #3, running through the shed and the City's Assessor's Tax lot line shows something different. That being said, if the developers plan is correct, it has the driveway to the home on Lot 3 backing up in the back up space and onto her property. She is concerned that cars entering Lot 3 will shine their headlights right into her bedroom windows.

Mr. Taintor stated that the City Tax Maps are not always accurate and it is likely that the Assessor's Map is based on a written description and not on a survey. A survey is more accurate.

Bernie Pelech, 175 Thaxter Road, nearby abutter. He supports Attorney Loughlin's proposal to purchase this land.

Seeing no further first time speakers, the Chair called for second time speakers.

John Lyons stated for the purposes of the Board, his home is the one that has the stream with the outlet for the wetlands. If they approve the proposed plan subject to the City and the Developer working out the term and conditions, easements and deeds, it prohibits him from weighing in on it. He is happy that the land behind his home will be open land, owned by Peter Loughlin. Development is good for the City and his only concern is about the water, the raingardens and the maintenance provisions. Also, will abutters have the right to bring claim against the home owners regarding the maintenance of the rain gardens.

Jerry Zelin applauded Attorney Loughlin for saving the wetland and maintaining the open area.

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

DISCUSSION AND DECISION OF THE BOARD

Deputy City Manager Allen has enough concerns, given the technical details Chairman Ricci brought out and the details still needed to work out the drainage system, to move to postpone to next month's meeting. Ms. Moreau seconded the application but notes they have two different applications to vote on.

Vote on Lot Line Revision:

Ms. Moreau made a motion to grant the lot line revision with the three recommended stipulations. Deputy City Manager Allen seconded the motion for purpose of discussion.

Deputy City Manager Allen's concern is there are easement areas that are located on that property and if they are trying to iron out the easement questions, maybe they should postpone both applications. Ms. Moreau stated there are no easements on the lot line revision property.

The motion to grant Preliminary and Final Subdivision approval (Lot Line Revision) 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, prior to recording of the 7-lot subdivision plat for Lots 170-24 and 167-5.

Vote on Preliminary and Final Subdivision Approval:

Ms. Moreau made a motion to postpone to the September meeting until more specifics about the legalities of the deed language and technical aspects are corrected. Deputy City Manager Allen seconded the motion.

Chairman Ricci asked for the Board’s opinion regarding asking the application to consider an easement at the front lot line between Lot #2 and Lot #3 where no structure can be placed. Ms. Moreau felt they should keep in mind that is the back yard of Lot #2. Chairman Ricci stated it was not a consideration but just his thought.

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

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G. The application of **HCA Health Services of NH, Inc., Owner**, for property located at **333 Borthwick Avenue**, requesting Site Plan approval to construct a ground level 50’ x 50’ concrete emergency helicopter helipad in a portion of the emergency room parking lot, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 240 as Lot 2-1 and lies within the Office Research (OR) District.

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Bill Duffy, of the Portsmouth Regional Hospital, was present with Jorge Pantelli from McFarland Johnson. They are bringing forward a plan for a helipad. They currently use a helipad at Pease. This new pad will be located at the ER in the rear and will allow them to have much faster access to patients. A lot of consideration has gone into the routing as they approach the hospital. Coming from the south/west they will follow Route 16 and I-95. They will come from the intersection area where I-95 and Route 16 come together and circle around the hospital.

Jorge Pantelli gave a quick summary of the project. He displayed an aerial of the area and showed where the helipad would be located. The helipad is a 50’ x 50’ concrete pad with a safety area that will be pavers, hollow with grass, reducing the amount of pervious area associated with this pad. The pad does not affect the wetland area as they are only disturbing the wetland buffer. From the perspective of the pad, it takes 20 spaces away from hospital parking however they currently are well over the required number. From a safety and operational aspect, while helicopters are landing they are incorporating 3 sets of gates to stop all traffic. The operational plan will be enforced by the hospital. All traffic will be stopped and people directed out of the area. It does not affect existing access in or out of the facility. Ambulances and people can still get though. From a safety perspective, the plan

shows the lights they propose to install on the building. In the evening, the buildings will be depicted by the use of the lights. They will also have a light on Liberty Mutual and lights on the high tension wires and orange balls. Lights will come on when the hospital is notified a helicopter is coming in. The beacon is blue and white. The only two lights that stay on afterwards are on the towers and they are red lights.

He displayed a layout of the helicopter route showing how it will come in and out. When flying over highways it masks the sound of the helicopter. They will be coming in tight to the building, will land for about 20 minutes and then depart. He has spoken with the chief pilot and he is aware of the noise concerns in Portsmouth. They use night vision goggles when flying in. They will not be flying in poor weather.

Councilor Thorsen asked about EMT's travelling across the driveway area. He is not sure what is in front of the path. Mr. Panelli confirmed that is handicapped parking. Councilor Thorsen asked how they control the traffic during landing and take off. Mr. Pantelli explained the hospital will provide people at each gate to stop traffic and they have developed a standard operating procedures manual. The helicopters give a 20 minute notice to the hospital so they have time to clear traffic.

Mr. Duffy added that one security guard will control the gate as soon as the call comes in. The entire ER parking area will be shut down.

Councilor Thorsen asked about dust being kicked up during landing and take off. Mr. Duffy responded that they position some vehicles to block a lot of the dust and sand.

Deputy City Manager Allen asked what kind of frequency do they expect to use the helipad. Mr. Duffy said, in their discussions with Dartmouth Hitchcock, they anticipate they will have about 50 landings per year. Mr. Pantelli stated there are several operating in Maine, one in NH and Mass has Med Flight. All pilots communicate with each other so they are all familiar with the procedures for each facility.

Mr. Marsilia asked about any protections for any spillage due to their proximity to the wetlands. Mr. Pantelli indicated, with respect to the helicopter itself, there is a drainage structure to capture some of it, however, from the perspective of a crash of some sort, there is an extinguisher on site and it is aviation specific, a non-volatile and safe for the environment. It will be on the pad itself so any small fuel leaks will go into the pad area, before it gets into the wetland. Mr. Marsilio asked if there would be refueling at this location. Mr. Pantelli said they would go over to Pease to refuel if necessary.

The Chair opened the public hearing and called for speakers:

Dan Wyand, of 65 Pinehurst Road, said he has two daughters born at Portsmouth Hospital and they have had to use the ER room on a very frequent basis. He asked about the gate that will be shutting down access to the ER. Mr. Duffy stated that gates will go down but when the gate drops down, access would bring them right into the main car port overhang. There will still be a path open for emergency room vehicles.

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

DISCUSSION AND DECISION OF THE BOARD

Ms. Moreau made a motion to grant Site Plan approval with the recommended stipulation. Mr. Rice seconded the motion.

Deputy City Manager Allen didn't want to vote against this and wants it to go forward however the City Council has requested a meeting with the FAA regarding the helicopter issue. His request would be they defer until the FAA discussion is held and this gets wrapped into it because it is another helicopter issue.

Mr. Barker sees this as two conflicting issues and he would vote in favor of approval this evening.

Chairman Ricci also agrees this is two different issues and would support the motion to approve.

Ms. Moreau felt because their flight plan is directly over the highway there shouldn't be an issue.

Councilor Thorsen understands the concern but agrees with the Chairman on this and believes it is a different issue with a different flight pattern. Also, the helicopter will be landing anyways (at Pease) which would result in an ambulance screaming through the neighborhood instead.

Deputy City Manager Allen said if the City Council Representative says he doesn't have a problem, then Deputy City Manager Allen doesn't have a problem with it.

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

- 1. Detail 6 on Sheet 10 shall be revised from plastic pavers to concrete pavers.

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FIVE MINUTE BREAK TAKEN

VI. CITY COUNCIL REFERRALS/REQUESTS

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

A. Proposed amendment to the Zoning Ordinance to require conference centers, convention centers and event centers to provide one off-street parking space per 2 persons of rated capacity. (This item was referred to the Planning Board by the City Council at its January 13, 2014 meeting, and postponed at the July 17, 2014 Planning Board Meeting.)

Mr. Taintor indicated he is still working on this and requested a postponement to the October meeting.

Ms. Moreau made a motion to postpone to the October Planning Board meeting. Mr. Barker seconded the motion.

The motion to postpone to the October Planning Board meeting passed unanimously.

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B. Proposed amendment to the Zoning Ordinance, Section 10.440, Table of Uses – Residential, Mixed Residential, Business and Industrial Districts, to change use #1.41 (Multifamily dwelling, 3 or 4 dwelling units) from “P” (permitted) to “S” (special exception in the General Residence A and B (GRA and GRB) districts.

Mr. Taintor indicated this is an issue that has been percolating in the Planning Department for a while. As the Tables in the Zoning Ordinance show, in the Rural and Single Residence districts, no multiple dwelling units are allowed and in the GRC district there is a “P” for 3 & 4 dwelling units and no for anything more. The issue is that many of the general residence areas have small lots and have one or two family dwellings and the residents may not be expecting to see a 3-4 multi family dwelling conversion or being built by right. Such uses would have Site Plan approval but they do not have any discretionary review as to whether they can or cannot be done. The Planning Department looked at all existing GRA and GRB districts and prepared a map showing all of the lots that have sufficient area for multi dwelling units and are shaded in one way or the other.

On the North Mill Pond you can see the condominiums that were developed at 4- unit buildings, and are shaded as grey. North to that is the large L-shaped parcel on Maplewood Avenue, the Cutts Mansion, which has been developed as a number of condominium units. One that is very familiar to the Board is on the corner of Dennett Street and Woodbury Avenue that were recently completed as 3-unit buildings without requiring any special exceptions. Also shown are lots with single family houses that can be converted to four dwelling units. There are really four streets that have clusters of these lots.

The recommendation is that this should be a Special Exception use rather than a “by right” use to develop a 3 or 4 family dwelling in the GRA and GRB districts.

They also have a note on the text that right now they already require a Special Exception in the GRA and GRB Districts to convert an existing 1 or 2 family dwelling to a 3 or 4 family dwelling, if there is not enough lot area.

Ms. Moreau thought it was a good idea and made a motion to recommend that the City Council adopt the proposed Zoning Ordinance amendment as presented. Mr. Barker seconded the motion.

The motion passed unanimously.

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C. Acceptance of easement at 7 Andrew Jarvis Drive.

This is a case where the City wants to widen and improve the corner and they have negotiated an easement with the developer who is building the house for a street widening easement and it would involve improvements to the property itself. It has been approved by the Legal Department and vetted by the DPW.

Chairman Ricci recused himself.

Vice Chairman Rice asked for discussion or a motion.

Deputy City Manager Allen made a motion to recommend to the City Council that it accept a permanent easement from D.R. Builders Inc. to make and maintain roadway, sightline and slope improvements at the intersection of Andrew Jarvis Drive and Lafayette Road. Mr. Gamester seconded the motion.

Motion passed unanimously.

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VII. OTHER BUSINESS

- A. Requests for Waivers from Development Plan Submission Requirements in Character Districts
 - 1. 143 Pleasant Street – Remove chain link fence.
 - 2. 36 Market Street – Install ground-mounted condenser
 - 3. 6-8 Market Square – Replace windows
 - 4. 92-94 Pleasant Street – Install solar panels
 - 5. 1 Harbor Place – Replace front doors and entry windows

Mr. Taintor explained they are now beginning to get the first new land use applications under the character districts. In an effort to streamline the process, they found that the requirements for a development plan are very broad and they don't apply to properties that are exempt from HDC review but there are still some type of projects that are not exempt from the HDC but have no impact at all on Site Plan PB. The ordinance, if adopted, gives the Planning Board or its designee the authority to waive the requirement for development plans for various small projects. There are two separate requests tonight. One request is for these five projects which are before them, where they would vote to waive the requirement for development plan submission and the other part is to designate Rick Taintor to have the authority to be their designee and waive submission requirements in the future for these small projects.

Deputy City Manager Allen made a motion to waive the requirement to submit a Development Plan for all five projects: Ms. Moreau seconded the motion.

The motion passed unanimously.

- B. Designation of Planning Director to waive submission requirements in Character Districts under Section 10.5A32.20 of the Zoning Ordinance

Ms. Moreau made a motion to designate the Planning Director with the authority to waive submission requirements for a Development Plan in Character Districts under Section 10.5A32.20 of the Zoning Ordinance. Deputy City Manager Allen seconded the motion.

Mr. Gladhill asked what defines a small project. Mr. Taintor said they have discussed that in house. They will be coming to the City Council with some technical or housekeeping changes. At this point, they are considering a change that is exempt from Site Plan review.

The motion passed unanimously.

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C. Request by Jeffrey T. Bell, Owner, for property located at 183 Austin Street, requesting a waiver of the requirement for Site Plan Review and approval. Said property is shown on Assessor Plan 145 as Lot 91 and lies within the General Residence C (GRC) district.

Jessa Berna, of the Planning Department, stated this is a very small project that went before the BOA and it is nearly exempt from the requirements of Site Plan review and it is making the building smaller, there are no parking changes, and the set backs are still nonconforming but more non conforming. The letter from the applicant’s attorney requested that this be waived as a small project but that can’t be done because under A. of the criteria it does increase the building height slightly in one location so the Planning Director does not have the authority to do that. Therefore, the applicant has requested a waiver from Site Plan review.

Mr. Gladhill indicated they just had a concern about dwelling units with 3 or more units and he knows this is GRC but if there is a concern, shouldn’t this require a site review plan.

Mr. Taintor said that the purpose of Site Plan Review is to review the development of the site. In this case, they are reducing impervious surface and improving the conditions. They are increasing set backs from the lot lines so there is really no site impact. This only deals with height, approximately 3’ to allow for compliant head room.

Attorney Bernie Pelech stated they are removing an old carriage shed which was a dwelling unit. They remain at 3 dwelling units. They are adding living space in the attic of the building.

Mr. Taintor reminded the board that they need a motion by six members of the board.

Deputy City Manager Allen made a motion to waive site plan review. Mr. Gamester seconded the motion.

The motion to waive the site plan review requirements for this application passed unanimously.

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D. The application of Eport Properties 1, LLC, Owner, for property located at 173-175 Market Street, requesting a Conditional Use Permit under former Section 10.535.13 of the Zoning Ordinance (Increased Building Height by Conditional Use Permit) to permit a four-story building where three stories is the maximum allowed. Said property is shown on Assessor Plan 118 as Lots 3 and 4, and lies within Character District 4 (CD4) (previously the Central Business A (CBA) district), the Downtown Overlay District and the Historic District. (This item was referred to the Planning Board by the Historic District Commission at its August 6, 2014, meeting. RSA 674:21,II requires that the Planning Board provide its comments prior to a vote by the Historic District Commission.)

Chairman Ricci asked to suspend the rules and allow the applicant to present for five minutes and then the applicant can respond to the Board for five minutes.

Mr. Taintor explained the issue is that there was a short period of time after the City Council voted to reduce the maximum height in CBA and CBB (7 month period) when the HDC was granted the

authority to allow an increase back up to the previously allowed height, given certain criteria. The application before them did receive their Conditional Use Permit, during that period between the notice of public hearing at City Council and the time that the City Council finally voted on it. The criteria was changing during that period. This was probably the most complicated zoning change they have had in a long time. The City Council then eliminated that Conditional Use Permit on April 7th and during that period there were appeals of the two decisions of the HDC, one to grant the Conditional Use Permit to increase building height and one to grant a Certificate of Approval. The BOA upheld the HDC approval on the Conditional Use Permit but overturned the Certificate of Approval. The applicant is now back before the HDC seeking a new Certificate of Approval. This is further complicated because the property is no longer in the same district.

In reviewing this, the Board is being asked to comment on a request to continue a Conditional Use Permit that was granted by the BOA. They are actually working with the zoning that was in effect September of 2013. He laid out what the Conditional Use Permit is. State law states that if the Planning Board is not the conditional use granting authority then the Planning Board has to comment on that before the HDC can make its decision. Just to be cautious, they felt the HDC should refer it back for comment. They are not being asked to make a recommendation but just to make comment on it.

The maximum building height was the lesser of 45' or 3 stories. This building meets the 45' height limit but not the 3 story height limit because of how the ground slopes back from Market Street. Their recommendation is to submit such comments to the HDC that they may determine appropriate.

Councilor Thorsen couldn't tell whether they are being asked to comment on the HDC granting an extension or the HDC recognizing the current existence of the CUP. Mr. Taintor understands the HDC's vote was to refer this to the Planning Board for comment on the extension of the CUP.

Mr. Gladhill believed they are just trying to cover their bases now that they know the HDC needs the Planning Board comment, per State law.

Ms. Moreau felt they are talking about renewing something that is based off a set of criteria and plans that are completely different. She is feeling it should have been re-evaluated and not extended. Mr. Taintor agrees that is a good point.

Mr. Gamester asked if the CUP had criteria that ran with the project but would also run with the land as well. Ms. Moreau referred to the criteria, including open space, materials, parking and many aspects that they have not seen.

Deputy City Manager Allen completely understands her point but because of the fact that it has still been in the process, he would lean towards keeping it going because it was active all this time in HDC.

Mr. Gladhill looked at it as if the CUP was separate from approval and is just bringing it up front. He felt the CUP should be brought first and then they should work on the rest of the plans.

Ms. Moreau pointed out that the HDC will continue to assure that the project continues to contain the proper criteria.

Councilor Thorsen felt that, in talking about the CUP extension (and the statute only talks about the CUP process), the deficiency in the first process was corrected by BOA action. All they are being

asked for is their feedback on a recommendation on whether or not the CUP should be extended. Since the CUP process is no longer in existence, how do they give an extension to what no longer exists.

Mr. Taintor’s interpretation is that it is not that the CUP existed but that the property is vested to the zoning that was in effect at that time. Whatever process or provisions were in effect before September 13, 2013 are what they have to work with. One more twist is that, unlike the HDC Cert of Approval, which specifically says it will expire after a year, they have made an administrative interpretation that like all other land use boards the CUP will also expire after one year.

Councilor Thorsen would like to recommend back to the HDC to ask these questions of the City Attorney. If the CUP does expire, does the extension follow the original CUP ordinance and is it allowable.

Mr. Taintor clarified that Councilor Thorsen is not recommending postponement but that is a comment he is making to the HDC.

Chairman Ricci said they wanted our advice so he has no problem with this. He was going to ask whether Attorney Sullivan had been consulted. Mr. Taintor responded that he has been working with the Legal Department and this is the way they thought would be the best way to treat it. There is nothing in the Zoning Ordinance that says anyone has the ability to request a re-hearing but because there was the ability to request a re-hearing of the Certificate of Approval they felt it should be treated the same way. They have discussed these things but it doesn’t hurt to ask them as explicitly as Councilor Thorsen has.

Chairman Ricci suggested that they ask Attorney Sullivan provide that information at the next HDC meeting.

Ms. Barket made the motion to ask the City Attorney to provide an opinion about whether the Conditional Use Permit expires after a year if it is not extended by the HDC, since this was not explicitly stated in the ordinance. This opinion should be provided to the HDC prior to their next meeting. Deputy City Manager Allen seconded the motion.

The motion passed unanimously.

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VIII. PLANNING DIRECTOR’S REPORT

- A. Status of Conditionally Approved Applications for Site Plan Approval – included in the Department Memorandum.
- B. Status of Conditionally Approved Applications for Subdivision Approval – n/a.

Mr. Taintor advised the Board that they have been talking about the next phase of Character Based Zoning. There will be a kick off meeting on September 23rd at City Hall and four days in November they will be having the Charrett for the North End and then dates in February for the Islington Street Corridor Charrette.

Ms. Moreau asked about the 6 month rule for subdivision recordings and whether the City has any penalties for enforcement. Mr. Taintor explained they would actually expire although the Department is trying to keep an eye on them.

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IX. ADJOURNMENT

A motion to adjourn at 11:05 pm was made and seconded and passed unanimously.

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Respectfully submitted,

Jane M. Shouse
Acting Secretary for the Planning Board

These minutes were approved at the March 19, 2015 Planning Board Meeting.