

**PLANNING BOARD  
PORTSMOUTH, NEW HAMPSHIRE**

**Remote Meeting Via Zoom Conference Call**

Per NH RSA 91-A:2, III (b) the Chair has declared the COVID-19 outbreak an emergency and has waived the requirement that a quorum be physically present at the meeting pursuant to the Governor's Executive Order 2020-04, Section 8, as extended by Executive Order 2021-01, and Emergency Order #12, Section 3. Members will be participating remotely and will identify their location and any person present with them at that location. All votes will be by roll call.

**7:00 pm**

**FEBRUARY 18, 2021**

**MINUTES**

**MEMBERS PRESENT:** Dexter Legg, Chair; Elizabeth Moreau, Vice Chair; Karen Conard, City Manager; Peter Whelan, City Council Representative; Ray Pezzullo, Assistant City Engineer; Colby Gamester; Peter Harris; Rick Chellman; Corey Clark; Polly Henkel, Alternate

**ALSO PRESENT:** Juliet Walker, Planner Director; Jillian Harris, Planner I

**MEMBERS ABSENT:**  
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**I. APPROVAL OF MINUTES**

A. Approval of the Planning Board minutes from the January 21, 2021 meeting.

Mr. Gamester moved to approve the Planning Board minutes from the January 21, 2021 meeting, seconded by City Council Representative Whelan. The motion passed unanimously.

**II. DETERMINATIONS OF COMPLETENESS**

**SUBDIVISION REVIEW**

A. The application of **The Fritz Family Revocable Living Trust, Owner**, for property located at **0 Patricia Drive** requesting Preliminary and Final Subdivision Approval.

Mr. Gamester moved to determine that the application is complete according to the Subdivision Review Regulations and to accept the application for consideration, seconded by Mr. Clark. The motion passed unanimously.

**III. OLD BUSINESS**

A. The request of **238 Deer Street, LLC, Owner**, for property located at **238 Deer Street** requesting a Conditional Use Permit in accordance with Section 10.1112.14 of the Zoning

Ordinance for provision of no on-site parking spaces where 12 spaces are required. Said property is shown on Assessor Map 125 Lot 3 and lies within the Character District 4 (CD4) District.

### **SPEAKING TO THE APPLICATION**

Jeremiah Johnson, John Chagnon from Ambit Engineering, and Attorney Sharon Summers spoke to the application. Mr. Chagnon commented that the application is a request for a CUP regarding the onsite parking requirements. The application came before the Board at the January meeting and the proposal was discussed at length. The Board tabled the request to allow the applicant to respond with parking alternatives. They have submitted additional information including a proposed lease revision, and a memo with parking options.

Mr. Chagnon commented that they submitted the site plan to show the lot compared to the adjacent properties. The parking spaces to the left of 238 Deer St. are on the adjacent lot. They are part of the 30 Maplewood Ave. property. They reached out to discuss a shared parking arrangement or access to their lot, but that property was not interested. The 46 Maplewood Ave. lot wraps around the back of 238 Deer St. The site plan was revised to delineate a proposed 15-minute ride share loading/unloading parking spot on the left side of the building. That will allow access to onsite storage and trash facilities. The site constraints make an underground parking garage not feasible. The building must be set back from the property lines to meet code requirements. The building is 64-68 feet in width after the 10-foot setback it leaves a 54–58-foot width. There is not enough room to create parking on either side of the aisle. The depth of the lot is 90 feet. The ramp required to create an underground parking garage would have to be 85 feet long. The building will only be 80 feet long. The Staff Memo states that the Planning Board has sufficient information to render a decision. This is the first microunit project that is being proposed for Portsmouth.

Mr. Johnson commented that they did an audit of the parking spaces that would be potentially available for this site. The application includes a list of parking lots in the immediate area that provide some type of contract relationship for parking spots. Most of them are not run by parking management companies. The table shows the proximity to the site. They have spoken to the management companies and gone through the application process to see how it works. Every lot has ample parking that they can commit to people on a monthly basis. The table shows the amount of parking spots they could expect or rely on from each lot. The developers also own a parking lot in Kittery, ME if there is need for crossover or a window of time. That would not be a reasonable space for long term parking. It is just to show they can privately put cars somewhere in an emergency situation. The packet also shows additional parking options where people can easily get a block of time for visitors. It is reasonable to expect enough flexibility in these parking spaces to accommodate visitor parking. There are metered spaces in non-high occupancy areas highlighted in the chart.

Ms. Summers commented that there was concern about how they would guarantee people would park off street and not in the neighborhood. This has been documented with the lease. The information from Gorrill Palmer showed that tenants of a microunit would be less likely to use cars. There is no one size fits all solution. It is better to tailor to each tenant. The tenant would be approached about parking before signing a lease. If they have vehicle, then the landlord will provide a list parking

options. The tenant will pick one and the landlord would make arrangements with the lease on behalf of the tenant. This will ensure it is complete. The tenant would pay for the parking cost as part of their rent. There may be some circumstances where they have access to private parking, and they don't want to shut that out. A provision has been included, which would allow someone to provide documentation of that solution on their part. The lease provision still provides assurance to the City that there is a mechanism in place to address parking concerns. If a resident has a car, they will park off street and not in the neighborhood.

Vice Chairman Moreau commented that she had some concern about some of the language in the draft lease. It is understood that they want to give the tenant the ability to find their own arrangement. However, a tenant may say they are going to park at their parents. However, if they are not paying for parking through the lease, then what is the guarantee they will use it. That doesn't totally protect the neighborhood. Vice Chairman Moreau questioned what would happen if the landlord can't provide parking. The lease will always contain this parking provision and the landlord will have to provide it in some way. Ms. Summers responded that the data shows there is an ample opportunity to provide parking. It can be a condition of approval to have the lease provision. Then it will be a contractual relationship between the City and the applicant. It should not be an issue to obtain parking leases for tenants with cars. Vice Chairman Moreau commented that there could be an issue longer down the road. The pandemic has created different parking patterns. Mr. Johnson noted that the amount of available parking was in the triple digits. Although they are dealing with pandemic times the majority of people contracting on monthly basis are residents. Visitors would not be doing monthly parking. Resident parking is close to the same as it was pre-Covid. These spots are carved out for monthly commitments. They aren't targeted for tourists or visitors.

Mr. Chellman questioned if it would be possible to limit possible tenant vehicles from parking on streets west of Bridge St. Ms. Summers responded that the intention of the lease is to prevent parking in the neighborhood. That particular action would be hard to enforce. The lease is determined before the tenant enters a lease. If they have a car, then they understand there is no parking. If they want to have their car, then they are obligated to abide by the system that the lease has constructed. They will have a choice on what off street parking lot they want to use have. Then the tenant will choose to accept a parking pass and pay for it via their rent or not have a car. Mr. Chellman commented that leasing spaces in a garage and bundling costs into the unit costs could disrupt the rent costs. The applicant has shown there is ample parking in the area. The Foundry garage will not be filled shortly. The project could find 6 spaces in the Foundry if needed. Mr. Chellman was concerned about making it a condition now because they could have tenants with no cars. Mr. Summers agreed they don't know the need. Leasing a block of spaces doesn't make sense because they don't know the need. It makes more sense to handle parking tenant by tenant when the lease is signed. The comments from the neighborhood and Board have focused on the Foundry because it's right there. However, the information in the packet includes a lot of different parking options in different locations.

City Council Representative Whelan questioned if there was anything in NH law that prevents against a tenant providing car information to their landlord. Ms. Summers responded that they don't see that as being an issue. It is no different than asking if a tenant has a pet. They may find out it's not attractive to tenants, but it is not illegal. City Council Representative Whelan questioned what would happen if they don't have a car at the time of signing the lease but get one later on. Ms. Summers responded that there would be language in the lease provision that a tenant would have an obligation to advise the landlord of their car if it was acquired during their lease. Worst case scenario the tenant would be in a lease violation and potentially evicted. City Council Representative Whelan questioned if there could

be one location all tenants could park at to have better control. Ms. Summers responded that before a tenant is able to sign a lease, they will have to agree to park off street in one of the options. They could all be in one location in real life, but it would develop organically. The lease provision addresses the neighbor concern.

Chairman Legg questioned what the monthly cost for parking was. Mr. Johnson responded that it ranged from \$150-\$225. Chairman Legg questioned if they had a sense of what the monthly rent would be for the microunits. Paying rent and the parking cost on top may be a deal breaker depending on price. Ms. Summers responded that the rents have not been established. It is a business decision the owners will need to decide how much the market will bear. Chairman Legg commented that it would be great to have microunits built and understand that market. The landlord could consider taking a haircut if someone has a car, so the tenant doesn't have to pay full rate for parking. The affordable unit may become less affordable if they have to pay for parking. Then the tenant may say they don't have a car.

Mr. Chellman commented that he was concerned about requiring parking but understood they did not want cars parking all over the neighborhood if the market perception was wrong. If parking was available now in the Foundry Garage, then the applicant could enter into an option to acquire parking spaces. City Manager Conard noted that they would need to check with the City Attorney to see if that would work.

Chairman Legg noted that the Board asked in the past whether this landlord could enter into an agreement with the city of Portsmouth for monthly parking spaces at the Foundry, but it did not seem like it was an option. City Manager Conard responded that she would need to follow up. Mr. Chellman commented that an option would ensure spaces were reserved and available for residents in the microunits.

## **PUBLIC HEARING**

Elizabeth Bratter of 159 McDonough St. commented that microunits would be great especially if they are priced low. The property rate, lack of parking and location make it doubtful that these units will be affordable for downtown workers. The thought that a large amount of young people don't have cars is ridiculous. Even with alternate transportation options Ms. Bratter still has a car as well. Residents will not pay \$100 a month if they want a car.

Robin Husselage of 27 Rock St. applauded the developer for proposing microunits. It is understood that they want to provide more affordable housing. However, they should be providing parking. Ms. Husselage asked for special exception to make her single-family residence to a two family. There was no parking on site. Ms. Husselage replaced her yard to accommodate 3 off street parking spots. The City should not allow a developer to build 21 units with no parking. Today the City does not have all amenities within a 15 min walk. Most occupants will own at least one car. Tenants will want to park for free in the neighborhood. It is closer than all the other options and nothing stops them from doing this. If the Board approves this CUP, then they are saying the rules apply to her but not this developer. The City won't be doing anything to protect the neighborhood from encroachment.

Second time.

Elizabeth Bratter of 159 McDonough St. commented that at the TAC meeting it was stated that the proposed area will be over parked by peak hours. The Foundry Garage will be full of reserved spaces by the time this is built. 30 Maplewood is not willing to share their parking because they need to meet their parking requirements. This lot is not big enough for this project. This proposal is not a realistic investment for Portsmouth parking. The area is already over capacity 3 seasons out of the year. The neighborhood fills up more in the summer. Approving any kind of residential units on this lot with no parking is crazy.

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

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

City Manager Conard clarified that the applicant cannot lease parking as a block at the Foundry. They would need to buy spaces for specific individuals.

Mr. Gamester moved to find that the one off- site parking space provided will be adequate and appropriate for the proposed use of the property, seconded by Mr. Chellman.

Ms. Harris commented that the one space on site is temporary, so the motion should reflect no parking spaces.

Chairman Legg agreed that a temporary space was not really an onsite space.

Mr. Chellman moved to grant the CUP as presented, seconded by Mr. Gamester.

Vice Chairman Moreau commented that she spends lot of time in that neighborhood and is familiar with the parking. Vice Chairman Moreau commented that she had a fair number of issues with the second paragraph of the draft lease. There is no guarantee the landlord can provide parking. On the other hand, the City desperately needs affordable housing. Vice Chairman Moreau commented that she had a hard time supporting the motion as it stands.

Mr. Harris agreed with Vice Chairman Moreau. It is unclear how they will enforce the situation if the tenant does have a car and doesn't communicate it to the landlord. It seems like the right idea but the wrong space for it. Mr. Harris also had trouble supporting the motion.

Ms. Harris commented that they needed to vote that the application satisfied the requirements of the ordinance before they voted on the CUP.

Mr. Chellman withdrew his motion, and Mr. Gamester withdrew his second.

Ms. Walker noted that they needed to first vote to find that no off-street parking spaces provided was adequate and appropriate. The Board needs to make that finding first and then vote on the CUP. It is how the ordinance is written. The Board has to make the finding first.

Mr. Gamester moved to find that the one off- site parking space provided will be adequate and appropriate for the proposed use of the property, seconded by Mr. Chellman.

Chairman Legg commented that based on the Board's discussion this motion does not meet the parking needs of this project. That is why the Board sent the applicant to go back and look at alternatives.

Chairman Legg questioned if they could vote the first motion down and consider approving CUP. Ms. Walker responded that if the finding is not met, then they can't move to approve the CUP. They can modify the motion with a provision of spaces off site. There is no onsite parking spaces, however, there can be a commitment for offsite spaces. The applicant is asking for no onsite parking.

Mr. Gamester withdrew his motion and Mr. Chellman withdrew his second.

Chairman Legg proposed a motion to find 0 onsite spaces provided but 7 off street parking spaces shall be provided via a long-term lease or shared parking agreement with the property owner based on page 3 of the Staff Memo. It shall be examined annually and renewed if needed by number of cars tenants collectively have and availability of other parking leases in the City.

Mr. Harris moved to find 0 onsite spaces provided but 7 off street parking spaces shall be provided via a long-term lease or shared parking agreement with the property owner based on page 3 of the Staff Memo. It shall be examined annually and renewed if needed by number of cars tenants collectively have and availability of other parking leases in the City, seconded by Mr. Clark.

Chairman Legg commented that the intent of that motion was to strengthen the commitment of the landlord for a certain period of time. Some of the public expressed the idea that the Foundry Garage will be full of cars by the time this building is complete. This motion asks the landlord to go now and lease spaces until they collectively have a sense of how many cars this development will actually have. The motion gives the City certainty that 7 leased spaces will be available to the tenants leasing the building.

Mr. Chellman proposed making an amendment to create an option for spaces. The owners don't know if the spaces are needed, and they should not have the cost bundled in immediately. Usually, an option can be obtained for less money but preserves the possibility. It would protect both sides.

Mr. Harris agreed with that amendment. Mr. Harris was concerned that 7 spaces were still not enough. Chairman Legg responded that if they get past the 7 spaces, then the rental agreement would protect that. The goal is to address the idea that the project has no onsite spaces. If the project were to have leases or options to leases in place, then it is guaranteed some spaces are available.

Mr. Chellman noted that this project could go to full market rate apartments. There would be no microunits and there would be bigger and fewer units with parking elsewhere. Chairman Legg commented that if the project changes significantly, then it would have to go back before the Board. Mr. Chellman confirmed that it could come back as a new project. Mr. Harris noted that the language on page 3 of the Staff Memo spoke to a period of 5 years from the issuance of the CO and questioned if that should be in the motion. Chairman Legg responded that 5 years may be too long. It should be reviewed and renewed for a certain period of time, but this should not be a burden if it turns out they don't need parking. The goal is for the City to be able to receive annual reports that show the number of off-site leased spaces being used and the number of cars tenants have provided for through the tenant agreement. They can continue to evaluate annually and renew it for up to 5 years.

Mr. Gamester requested that the motion be read back. Chairman Legg responded that it was to find that 0 on-site parking spaces provided, and 7 off street parking spaces shall be provided via a long-term lease or shared parking agreement with the project. The lease will be evaluated annually and if needed renewed for up to 5 years. That is the first step and then the second motion should be to grant the CUP as presented with a stipulation about the tenant lease agreement. Mr. Chellman commented that they

should add the legally binding option arrangement should be incorporated into the first motion. Mr. Harris and Mr. Clark were agreeable to the amendment.

Mr. Gamester commented that they could find the no on site parking adequate and appropriate and then they still have to address the CUP. The first motion should be kept simple and if it passes then conditions can be added to the CUP. Mr. Harris commented that it may help to combine it into one vote. Chairman Legg agreed that in this case two votes seemed confusing. For clarity they should wrap the two motions into one vote.

Ms. Walker commented that what was crafted so far was fine and they could add granting the CUP as presented with stipulations to the current motion. Chairman Legg noted that they should add a stipulation that anything beyond 7 spaces, then they would need provide evidence of off-street spaces.

Ms. Harris commented that the motion could be to find no on-site parking spaces provided was adequate and appropriate for the use of the property with the stipulation that off street parking for 7 spaces provided via a long-term lease, shared parking agreement, or option within an appropriate vicinity. This shall be renewed annually for up to 5 years, and vote to grant CUP as presented.

Mr. Harris and Mr. Clark agreed to the amended motion.

Mr. Clark commented that he agreed with Vice Chairman Moreau's concerns about the second paragraph in the lease agreement. Chairman Legg noted that if there was enough concern from the Board, then a stipulation could be added to amend or delete that paragraph.

Mr. Gamester commented that this project is appropriate because if it is not 21 microunits, then something different will come through and they will still run into this issue. There is no room for parking other than a temporary space. The concerns of the neighborhood were not taken lately. This project is something the City has been looking for. It comes with its own challenges but there is parking in the vicinity. Mr. Gamester noted that he would support the motion.

Vice Chairman Moreau questioned if the landlord would still provide parking if the need extended past the 7 spaces in the motion. Chairman Legg responded that the landlord would be required to demonstrate they have either a long-term lease or option for 7 spaces, but they are also required with lease agreement to find parking for every tenant that has a car no matter what that number is. Vice Chairman Moreau commented that she would support the motion if the second paragraph of the lease was stricken. Mr. Clark agreed.

Mr. Gamester commented that would mean that a tenant can only have a car if they find parking via the landlord. They can't have parking through any other satisfactory evidence of the tenant. Mr. Chellman agreed the burden should be on the developer who has more control than the tenants. Chairman Legg supported the deletion of the paragraph if it moved the project forward.

Mr. Gamester noted that a lot of monthly parking agreements require evidence that they are a resident of Portsmouth. Mr. Gamester questioned how the landlord will arrange for spaces on the tenant's behalf with that requirement. City Manager Conard responded that the landlord can pay for a monthly parking pass on behalf of an individual with a Portsmouth address.

City Council Representative Whelan commented that he was not ready to support the motion. The neighborhood is under a lot of duress. The City hasn't helped the neighborhood and it is not right to dump more cars into that area. The Board should not approve things with no parking on site.

Chairman Legg agreed that the neighborhood is stressed, which is why they are trying to figure out how to provide parking.

Mr. Chellman commented that nobody is proposing to put 20 cars on the streets in that neighborhood. 7 spaces came from the parking analysis that was presented and it was decided that was adequate. The lease agreement puts the burden on the developer to provide off street parking. Taking the second paragraph out of the lease does that.

Mr. Gamester commented that if this does not get approved this could come back as a completely different project. All of it will require parking unless it is a retail shop. It's going to happen and come before the Board regardless of units. There will be an issue for any project on this property.

Mr. Harris and Mr. Clark agreed to amend the motion to remove the second paragraph from the lease.

Chairman Legg commented that the Board struggled over this for two meetings because the City has been talking about microunits for forever. This is the first project to come before this Board with a proposal for microunits. Fundamentally it is a good project. Rent will be less because the apartments will be smaller than average apartments. The Board has worked with the applicant to address the parking. This is the way to do that and give flexibility. If there is in fact 21 cars, then this assures off street lease agreement parking for each of them. There is no guarantee because tenants can lie about having a car. However, this is stronger than if they just had 12 onsite spaces because the landlord has to find spaces for every car. Chairman Legg confirmed he would support the motion.

The Board voted to **grant** this request as follows:

Mr. Harris moved find that the provision of no on-site parking spaces will be adequate and appropriate for the proposed use of the property and to grant the conditional use permit, seconded by Mr. Clark with the following stipulations:

1) A minimum of 7 off-street parking spaces shall be provided via a long-term lease, shared parking agreement or option to enter into a long-term lease or share parking agreement with a property owner in the vicinity of the project. The lease, shared parking agreement or option for the off-site parking spaces shall be reviewed annually with the property owner and Planning Director and shall be renewed as needed for a period of up to 5 years from the issuance of the final certificate of occupancy for the property.

2) Revise the draft lease agreement related to the tenants' obligation to secure off-site parking if the tenant owns a car by removing paragraph 2 of the draft lease agreement presented by the applicant. The final lease agreement shall be reviewed and approved by the Planning Director and City Attorney.

The motion passed by a 7-2 vote. City Council Representative Whelan and Mr. Harris voted against the motion.

B. The application of **Raleigh Way Holding, LLC, Owner**, for properties located at **0 Falkland Way** requesting Site Plan Review approval for the demolition of an existing garage and shed and the construction of a new 4-unit residential building with associated parking, stormwater management, lighting, utilities and landscaping. Said properties are shown on Assessor Map 212 Lots 112 & 113 and lie within the General Residence B (GRB) District.



## **SPEAKING TO THE APPLICATION**

Mike Garapee spoke to the application. Mr. Garapee commented that Martha Terrace was a subdivision approved in the mid 1970s across from Banfield Rd. It is a horseshoe that backs onto Ocean Road. This is an existing paper street known as Patricia Drive. The overview sheet shows the second part of Patricia Drive was never built. This proposed section will connect back to Patricia Drive on the other side. For whatever reason the road was not continued and ended in a cul-de-sac. There is a division between what is accepted as City right of way and what is considered private right of way. It is the recommendation that this Board release that portion of City right of way back to the owners. Then the entire road becomes a private way. The road will be regraded and replaced with an 18-foot-wide private road to provide access to two lots. The existing catch basins will be removed. They will be replaced with a rain garden for appropriate drainage. This project requires a CUP for wetland impacts. Part of the existing roadway is in the wetland setback. There will be a reduction of pavement in the buffer. There is a waiver request associated with this application. The two proposed lots meet the frontage and other requirements.

Vice Chairman Moreau requested clarification that the only buffer impacts were from the road and drainage and not the houses and driveways. Mr. Garapee responded that was correct. The houses, driveways and septic are out of the buffer completely.

## **PUBLIC HEARING**

Chairman Legg 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. Gamester moved to grant a waiver to the Subdivision Regulations -- Section VI(3)(B) Street Rights of Way and Residential Street Minimum Standards to allow 18' of pavement width where 32' is the minimum allowed by finding that specific circumstances relative to the subdivision, or conditions of the land in such subdivision, indicate that the waiver will properly carry out the spirit and intent of the regulations, seconded by Vice Chairman Moreau.

The motion passed unanimously.

Mr. Gamester commented that reducing the width was appropriate given that it is a two-home subdivision and part of the pavement is in the buffer. Vice Chairman Moreau appreciated the road maintenance agreement.

Mr. Gamester moved to **grant** Preliminary and Final Subdivision approval, seconded by Vice Chairman Moreau with the following stipulations:

- 1) On Plan Sheet 4 – Update contractor’s note to remove asphalt berm on Martha’s Terrace to be removed.
- 2) On Plan Sheet 9 – remove reference to “water services to the City of Portsmouth” in note 20 and Proposed Access Easement detail and in note 20 – Sheet 8.

- 3) On Sheet 9 – Note 20 to be revised to “Easement to be provided to the City of Portsmouth over the entire private ROW area for the purposes of accessing water valves and leak detection of the water lines.”
- 4) Sheet 9, add to drainage easement note in detail that the easement is to the “City of Portsmouth”
- 5) Rain garden design and detail shall be reviewed and approved by DPW.
- 6) Applicant shall grant and record an easement granting stormwater flowage rights across Lot 11-1 from the Private ROW.
- 7) Property monuments shall be set as required by the Department of public Works prior to the filing of the plat.
- 8) GIS data shall be provided to the Department of Public Works in the form as required by the City.
- 9) The final plat(s) shall be recorded at the Registry of deeds by the City or as deemed appropriate by the Planning Department.
- 10) The Board recommends release of the public portion of the right-of-way to the developer as a private road as shown on the plans submitted. This is subject to final approval by the City Council.

The motion passed unanimously.

Vice Chairman Moreau commented that it was good that the houses were out of the buffer.

Mr. Gamester moved to **recommend** to the City Council that the private road be renamed to Hemlock Way, seconded by Vice Chairman Moreau. The motion passed unanimously.

Mr. Gamester moved to **grant** Wetland Conditional Use Permit approval, seconded by Vice Chairman Moreau with the following stipulations:

- 1) The Plans to be recorded shall note that dumping of any kind including landscape debris is prohibited in the wetland buffer.
- 2) The Plans to be recorded shall note the prohibition of salting of the road way due to the close proximity to a prime wetland.
- 3) The Plans shall be updated to show a wildflower seed mix in the storm-water treatment basin.
- 4) Permanent wetland boundary markers shall be installed during project construction and at select locations along the roadway to be verified in consultation with the Planning Department to indicate proximity to wetland areas.
- 5) Plans shall be updated to show snow storage locations.
- 6) Plans shall be updated to note that topsoil used on the lots shall not include pesticides and fertilizers.

The motion passed unanimously.

- C. City Council referral on the request of **ASRT, LLC, Owner**, for the restoration of involuntarily merged lots at **138 Leavitt Avenue** to their pre-merger status pursuant to NH RSA 674:39-aa.

Mr. Gamester moved to **postpone** this item to the March Planning Board meeting, seconded by City Council Representative Whelan. The motion passed unanimously.

#### IV. PUBLIC HEARING – NEW BUSINESS

- A. **REQUEST TO POSTPONE** The application of **Clipper Traders, LLC, Portsmouth Hardware and Lumber, LLC, Owners and Iron Horse Properties, LLC, Owner and Applicant**, for properties located at **105 Bartlett Street and Bartlett Street** requesting Site Plan Review approval for the demolition and relocation of existing structures and the construction of 152 dwelling units in 3 buildings, and associated community space, paving, lighting, utilities, landscaping and other site improvements. Said properties are shown on Assessor Map 157 Lot 1 and Lot 2 and Assessor Map 164 Lot 1 and 4-2 and lie within the Character District 4-W (CD4-W) and Character District 4-L1 (CD4-L1) Districts.  
**REQUEST TO POSTPONE**

Vice Chairman Moreau and City Manager Conard recused themselves from this application.

Mr. Gamester moved to **postpone** this request to the next Planning Board meeting, seconded by City Council Representative Whelan. The motion passed unanimously.

- B. **REQUEST TO POSTPONE** The application of **Clipper Traders, LLC, Portsmouth Hardware and Lumber, LLC, Owners and Iron Horse Properties, LLC, Owner and Applicant**, for properties located at **105 Bartlett Street and Bartlett Street** requesting Wetland Conditional Use Permit Approval in accordance with Section 10.1017 of the Zoning Ordinance for work within the 25-foot, 50-foot, and 100-foot wetland buffers to North Mill Pond which includes the removal of existing impervious surfaces and buildings, construction of 3 stormwater outlets, repaving of an existing access drive and parking lot, construction of a linear waterfront trail and community space, and construction of three new buildings which will result in a net overall reduction in impervious surfaces of 28,792 square feet. Said properties are shown on Assessor Map 157 Lot 1 and Lot 2 and Assessor Map 164 Lot 1 and 4-2 and lie within the Character District 4-W (CD4-W) and Character District 4-L1 (CD4-L1) Districts. **REQUEST TO POSTPONE**

Vice Chairman Moreau and City Manager Conard recused themselves from this application.

Mr. Gamester moved to **postpone** this request to the next Planning Board meeting, seconded by City Council Representative Whelan. The motion passed unanimously.

- C. The application of **Michael Petrin, Owner**, for property located at **239 Northwest Street** requesting Wetland Conditional Use Permit approval in accordance with Section 10.1017 of the Zoning Ordinance to renovate an existing home with portions of the new construction in the wetland buffer. Said property is shown on Assessor Map 122 Lot 3 and lies within the General Residence A (GRA) District.

Vice Chairman Moreau recused herself from this application.

### **SPEAKING TO THE APPLICATION**

Mike Petrin spoke to the application. They are completing a renovation on the house and the goal is to restore it to its original condition. The property is up against the Bypass. The proposal is to remove the L shaped part and square off the house with a new dormer as well. The house is all in the 100-foot buffer, but the majority of the work will be done away from the pond. Currently the lot is 50% permeable the proposed project would make the lot 51% permeable. The addition will be 112 sf. There is good soil and the house in its current state has no drainage issues. It will be improved by adding a drip line trench on the front and back of the house. Runoff will be mitigated with a silt sock filtration control measure. The house will be squared off to fit some modern capabilities for interior space. There is not a lot of vegetation on the site. They will demolish the front deck and put in lawn. A new stair in the entryway will be added.

### **PUBLIC HEARING**

Chairman Legg 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. Gamester moved to **grant** this request as presented, seconded by City Council Representative Whelan. The motion passed unanimously.

Mr. Gamester commented that it was good the soils were tested, and it sounded like a good plan.

- D. The application of **Michael J. O'Connor, Owner**, for property located at **163 Sparhawk Street** requesting Wetland Conditional Use Permit approval in accordance with Section 10.1017 of the Zoning Ordinance for in-kind replacement of garage steps and a landing and installation of stormwater infiltration. Said property is shown on Assessor Map 159 Lot 7 and lies within the General Residence A (GRA) District.

### **SPEAKING TO THE APPLICATION**

John Chagnon from Ambit Engineering spoke to the application. The proposal is to replace the existing garage with a new structure. The project is adjacent to the North Mill Pond and up on an elevated banking. The owners also own a second lot that is a small, vegetated lot. There is a deck and nice backyard with view of the pond. The demolition plan shows that the existing garage will be removed, and some pavement will be saw cut and taken out. The existing yard drain will be removed. The back stairs will be taken out and replaced post construction. The proposed garage will be the same footprint as the existing one. It will be on a slightly raised elevation to keep runoff from ponding in the garage. There will be a gutter along the front that will connect to an infiltration trench. That connects to existing drainage. The grading will raise the garage up from

the street. The Conservation Commission provided they recommendation for approval. The Staff Memo has one condition which is to permanently mark the wetland boundary. Mr. Chagnon requested more clarification on what that meant. The edge of the wetland is the HOTL. It may not be necessary as the owners are aware of the adjacent resource. There are a few trees that could be marked, but the only people back there are the owners.

Vice Chairman Moreau commented that it was good the garage was being raised. Vice Chairman Moreau questioned if the angle of the roof would be the same on the new garage. Mr. Chagnon responded that the pitch would be the same. Runoff from the whole front edge would go into a gutter then directly to the drip apron. Runoff from the back will go to the drip apron on the back side.

Mr. Gamester requested clarification on the wetland boundary markers. Ms. Harris responded that it is a new requirement added to the ordinance in the last revision. The applicant needs to mark the wetland boundary. Mr. Chagnon commented that it would make sense in a forested area or at a freshwater wetland because a lot of times people don't know where the boundary is.

City Council Representative Whelan questioned if they were marking the boundary to prevent cutting and disturbance. Ms. Harris confirmed that was correct. Mr. Chagnon noted that the boundary would be the HOTL edge, so there is tidal influence. There is a lot of stone rip rap that exists there now. It might be difficult to mark it in a clear fashion. They can install tree placards if that's acceptable. Mr. Clark agreed that markers may not be needed for this project. There are lot of DES requirements for this project. Mr. Chagnon commented that a DES permit was required for the project. There is no requirement in the State permit process to mark any boundaries. Marking the boundary would be difficult because of the rocks.

## **PUBLIC HEARING**

Chairman Legg 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**

Chairman Legg commented that marking the wetland was part of the ordinance, so it is not optional. What is optional is how the border is marked. If this is approved, then there should be a stipulation to have markers installed in consultation with City Staff so that it satisfies both parties.

Mr. Gamester requested clarification on what the best practices are for the markers. Ms. Harris responded that there was flexibility, and it can be done in consultation with Staff.

Mr. Chellman commented that this item should be revisited in the ordinance. The language is very vague. Permanent boundary markers are a big deal and should not be required. Chairman Legg commented that it would be helpful if City Staff provided a report back at the next meeting to explain the rationale on why that was changed and what ways we as a City we may want to amend it in some fashion. In this particular instance the property owner will work with City Staff, so hopefully they will meet the spirit of the ordinance without undue hardship.

Vice Chairman Moreau moved to **grant** this request, seconded by Mr. Gamester with the following stipulation:

- 1) Permanent wetland boundary markers shall be installed during project construction as determined by the Planning Department.

The motion passed unanimously.

- E. The application of **Robert Gigliotti, Owner**, for property located at **292 Lang Road** requesting Wetland Conditional Use Permit approval in accordance with Section 10.1017 of the Zoning Ordinance to construct an addition of an entryway to the front of the house and a deck behind the house, along with a replacement tank and associated piping within the wetland buffer zone. Said property is shown on Assessor Map 287 Lot 4 and lies within the Single Residence B (SRB) District.

### **SPEAKING TO THE APPLICATION**

Rob Gigliotti spoke to the application. The septic design was done by Barry Engineering. 310 sf of land will be disturbed in the 100-foot buffer. The closest distance to the buffer is the 28-sf foyer. That is 30 feet from the buffer line. Beyond that the 150-sf deck will be behind the house and further away from the buffer. The deck will have 6 footings. The remaining impact will be for the septic tank and piping. Down the road Mr. Gigliotti would like to build a house in the back, but that is not on the application yet. It will all be on buildable land. A stone drip will be added, and crushed stone will be used under the deck. The wetland will be staked out during construction.

### **PUBLIC HEARING**

Chairman Legg 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**

Vice Chairman Moreau moved to **grant** this request, seconded by Mr Gamester with the following stipulations:

- 1) The applicant shall install a stone drip edge around the house and under the proposed deck to allow infiltration of stormwater.
- 2) The applicant shall stake the wetland buffer during project construction.
- 3) Permanent wetland boundary markers shall be installed during project construction as determined by the Planning Department.

The motion passed unanimously.

- F. Application of **JJCM Realty, LLC and Topnotch Properties, LLC, Owners**, for property located at **232 South Street** requesting Wetland Conditional Use Permit approval in accordance with Section 10.1017 of the Zoning Ordinance to construct a new deck and staircase onto the existing residential structure, relocate an existing storage shed and install native plantings in the buffer. Said property is shown on Assessor Map 111 Lot 2 and lies within the Single Residence B (SRB) District.

### **SPEAKING TO THE APPLICATION**

John Chagnon from Ambit Engineering spoke to the application. The project is to build a new deck and stairs on the back of the building. The shed will be relocated, and more plantings will be provided. The wetlands are off site, but the lot is in the buffer. The two-story deck will have a spiral staircase on one side to access the second story and a single staircase on the other to access the first floor. It will create a better egress. There will be a little addition in the buffer to square off the back of the building to provide better circulation. The deck also provides outdoor space to the owners of the units. The CUP plan shows the impact in the buffer. The shed is moving closer to the existing house. It has a 10-foot setback requirement. Moving the shed allows for a planting area in back. New walkways will be provided to access the front of the building. The Conservation Commission has recommended approval. They can put wetland markers at the property line, but the edge of the wetland is on a different property.

Mr. Gamester questioned what they would be marking if the wetlands were offsite. Mr. Chagnon responded that a lot of communities want the buffer marked.

### **PUBLIC HEARING**

Chairman Legg 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**

Vice Chairman Moreau commented that they needed to relook at the ordinance to clarify the wetland boundary markers.

Vice Chairman Moreau moved to **grant** this request, seconded by Mr. Gamester with the following stipulation:

1) Permanent wetland boundary markers shall be installed during project construction as required by the Planning Department.

The motion passed unanimously.

### **V. ADJOURNMENT**

Mr. Gamester moved to adjourn the meeting at 10:17 p.m., seconded by Vice Chairman Moreau. The motion passed unanimously