

**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**

**April 15, 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; Corey Clark; Peter Harris; Rick Chellman; and Polly Henkel, Alternate

**ALSO PRESENT:** Juliet Walker, Planner Director

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

A. Approval of the Planning Board minutes from the March 18 and 25, 2021 meetings.

Mr. Gamester moved to approve the Planning Board minutes from the March 18 and 25, 2021 meetings, seconded by Vice Chairman Moreau.

Vice Chairman Moreau commented that on page 12 of the March 18, 2021 minutes the Board talks about a state statute, but it is spelled incorrectly as a statuette.

The motion passed unanimously. Ms. Henkel abstained from the vote.

**II. DETERMINATIONS OF COMPLETENESS**

**SITE PLAN REVIEW**

A. 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.

## **SUBDIVISION REVIEW**

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

Mr. Gamester to determine that the application is complete according to the Site Plan Review Regulations and to accept the application for consideration, seconded by Mr. Clark. Motion passed unanimously.

- A. 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 Preliminary and Final Subdivision (Lot Line Revision) approval.

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

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

## **III. 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. 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 a Conditional Use Permit for shared parking on separate lots as permitted by Section 10.1112.62 of the Zoning Ordinance and 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.

## **SPEAKING TO THE APPLICATION**

Mr. Gamester moved to discuss Public Hearings – Old Business Items A, B and C together and vote on them separately, seconded by Mr. Clark. The motion passed unanimously.

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

Owner Ed Hayes spoke to the application. Mr. Hayes' family has a lot of history in Portsmouth and along the North Mill Pond. His grandfather established Ricci Lumber in 1957. Mr. Hayes was also a member of the Advocates for the North Mill Pond. They did annual clean ups and removed a lot of debris and trash. It has improved over time, but there is still clean up that can happen. This plan will remove almost 2/3 of an acre of impervious surface in the buffer. Mr. Hayes owns the brewery and doggy daycare building. In 2015 they worked with the railroad to purchase land. They have met with NHDES to see if it was plausible to build in the 50–100-foot buffer area. It was their opinion that DES would be supportive because a considerable amount of structure will be removed from the 50-foot buffer. It is also currently an industrial site. This plan would improve storm water treatment and grant the City an easement for the North Mill Pond Trail. Without that information they would not have purchased the land. There was a neighborhood meeting in January 2018 where they disclosed the plans to the abutters. The Planning Board gave a unanimous vote to recommend rezoning the parcel. City Council unanimously voted to rezone the land as well. A massing plan was developed to show what could be built on the lot. It showed buildings in the 50-100 buffer. This project has been well thought out and it was not a hasty decision. The goal is to add value to the neighborhood. The North Mill Pond is a hidden treasure, and they want the public to enjoy it. Once the parcel is developed the site will be self-policing and a lot cleaner. The current plan fully complies with zoning, has received endorsement from the Conservation Commission, and improves the buffer zone by removing almost 29,000 sf of impervious surface from the 100-foot buffer. It will replace invasive species with open spaces and native plantings. The easement will provide ¾ of a mile of greenway to the City. It is consistent with the City's Master Plan goals. It will provide a public park that will cover over half an acre of land. Mr. Hayes requested the Planning Board's approval because it was a good plan.

Attorney Rob Prevetti commented that there was an unprecedented intervention from City Council at the site walk. The project is in compliance with the land use boards and will provide public benefits. This is a privately owned project that has the property rights protection that limits governmental interference. It is unclear why some members of the City Council are targeting this project. The Council should respect the well-established land use planning process and ensure this applicant receives equal protection. This project will create 152 housing units where Portsmouth is in short supply. Most of the units would be one bedroom and studio. Some of the City Council and public are concerned about the ecology of the North Mill Pond. The Planning Board review of that will be based on the 6 criteria required to grant a wetland CUP. The Conservation Commission voted 6-1 to recommend approval to the Planning Board. The applicant has worked to shrink the size of the project based on feedback from the public and the land use boards. This project will

dramatically improve the pond and reduce impervious surface in 0–100-foot buffer. The buffer area will be enhanced, and stormwater treatment will improve drainage into the North Mill Pond. Invasive plants will be removed and replaced with native plantings. The plan has a heavy emphasis on creating conserving and improving the environment in the City. This project presents the opportunity to conserve important community assets at no cost to the City and taxpayers. There will be a shoreland easement for the greenway and public park. There will be publicly accessible space and habitat along the North Mill Pond. The Board should base their decision on law, science, fact, and what is best for the community as a whole.

Patrick Crimmins from Tighe and Bond commented that they submitted a comprehensive package to the Planning Board. The application has incorporated feedback from the Planning Board, TAC, Conservation Commission, and the Public. The property is bound by Bartlett St., the railroad, and the North Mill Pond. There is 2,000 linear feet of tidal wetland and buffer. The existing vegetation and invasive species are documented. The site has a history of industrial use with the railroad. The site currently has Ricci Supply, a few other businesses, road, and parking right up to the bank of the North Mill Pond. Currently runoff sheet flows into the pond with no treatment or is collected into the old, combined sewer overflow system (CSO.) The site has a brewery and doggy daycare, some derelict railroad structures, and a vacant machine shop with paving and compacted gravel. Almost all of the 100-foot tidal wetland buffer has been previously disturbed, overgrown, and neglected. The property in question includes a significant portion of planned improvements along the North Mill Pond shore. The plan includes a bike/pedestrian path that is in the City's North End Vision Plan and the Master Plan. The final plan calls for a linear greenway and community park. The multiuse path will include wetland restoration and pond edge stabilization that will be constructed through public and private partnership. The City created the overlay to allow developers to build taller buildings as an incentive to get developers to build in these areas. The cul-de-sac was relocated closer to Bartlett St. The shore will consist of a path and open space. The project supports the Master Plan goals of reinvesting in underutilized lands, creates pedestrian connectivity, promotes open space, and encourage access to the waterfront. The front portion of the site will have the Ricci Lumber commercial buildings, the private road and improved parking. The rear of the site will have residential buildings. The buildings have been pulled back from the North Mill Pond banks and landscape areas were added. There will be road improvements with bike sharing. The plan includes significant stormwater management improvements. There will be deep sunk catch basins with oil separator hoods and storm water treatment units. The new systems will eliminate the combined overflow, which aligns with a DPW initiative. The plan will provide treatment where none is currently provided. The rear portion of the property development area will have three multifamily buildings labeled A, B, and C. The grade plan exhibit shows how the buildings comply for height. Between the three buildings there will be 152 units. There will parking below buildings A and B. This project will provide additional housing that is walkable to the downtown. The buildings cannot be built within the view corridors.

Right now, the existing turntable encroaches on a view corridor. That will be removed, and the new buildings will be out of all of the view corridors. The site had more constraints that needed to be considered as well. It bisects a zoning district line, so that had to be accounted for. There is a 15-foot setback requirement to the railroad. There is also a large 25-foot municipal sewer easement in the middle of the site. All of those conditions contributed to where the buildings were located. The plan will create expansive public open space in an urban setting. The project also includes site improvements to the roadway with parallel parking, the cul-de-sac, and parking under buildings A and B. There will be surface parking between the building and the railroad. All of the parking will be out of the 100-foot buffer. There will be improvements to the sidewalk to Bartlett St. The North Mill Pond trail goes around the building and out beyond the parcel. The path was designed to allow emergency vehicle access around all of the buildings. The project also requires utilities. New gas and water will come off Bartlett St. and the electric will be underground. The lighting will be dark sky friendly. There will not be any light spill over in the adjacent properties. There will be no lighting on the rear of the path. Right now, the site elevation is 12-13. The site will be regraded to allow for the underground parking to sit at elevation 7. That is above the HOTL. The finished floor will be 17.5 elevation. The grading plan includes significant drainage improvements and stormwater treatment. The proposed treatment for the building includes treatment units and underground detention tanks to mitigate the temperature of runoff before it discharges to the pond. The detention is not required but was included in response to feedback from the Conservation Commission. The detention tanks will reduce peak runoff rates into the pond as well. There will be a series of yard drains around the buildings. Runoff from the park will go to the rain garden. The rain garden will be an aesthetically pleasing central feature and a pollinator habitat. The trail will be porous asphalt. There will be 47,703 sf of greenway community space. It exceeds the 20% requirement. There will be 23,552 sf of park adjacent to the community space. The total public open space is 71,255 sf. Overall, there will be 58.1% open space where only 15% required. The project will provide buffer enhancement by removing invasive plants, with the exception of the Norway Maples. They provide a valuable canopy. The invasive plants will be removed from the 25-foot buffer and the construction areas. The project will provide improvement in the 100-foot buffer by pulling the parking and buildings from the pond and reducing impervious in the 100-foot buffer. 20,385 sf of impervious surface will be removed from the buffer. Overall, it is a net reduction. The project has pulled the buildings further back. Currently there is over 14,000 sf of building in the buffer. This proposal would have a little over 6,000 sf in the buffer. The ordinance indicates there should not be a net loss of impervious in the buffer. This project exceeds that requirement by removing over 50% of the existing building footprint. There is a total of 2/3 acre reduction of impervious surface. The applicant is seeking approval for the site plan, lot line revision, a parking CUP and a wetland CUP. The project has been thoroughly vetted with 14 public meetings in the past 20 months. It also requires permits from NHDES and AOT. Those applications are in process. In March they met with NHDES to review the mitigation proposal. The last time the project was in front of the Planning Board was in March 2020 for a preliminary design review. Improvements have been

made since then. They reduced the density from 174 units to 152 units. The second story portion was removed from building A. Building C's footprint was revised to be out of the Salem St. view corridor. They eliminated footprint in the buffer and created open space between B and C. The parking was reduced. The path was realigned to be further way from the pond. The amount of asphalt was minimized, but fire access is still being provided. There is additional buffer enhancement. Invasive plants will be removed, and bank stabilization measures will be put in place. The trip generation memo has been updated. The project will result in an overall reduction in trip generations. The application modified the lot line by pulling the cul-de-sac into the parking area. The first lot will be 1.2 acres with the Ricci buildings and the road. The second lot will consist of the residential buildings. The staff memo included 16 items that were addressed. The applicant is in agreement with the remaining stipulations of approval. One item pertains to water improvements in Bartlett St. They have agreed on a fair share for water improvements on Bartlett St. The CUP for parking is required because some of the parking is on a separate lot. There are 210 parking spaces total. 190 spaces are located on the development lot. There are 95 spaces on the surface parking lot outside of the buffer. Then another 95 spaces under buildings A and B. The remaining 20 spaces will be on the private road and around the cul-de-sac. The applicant has been very responsive to comments on the buffer impact and density. The Conservation Commission has seen 5 versions of the plan. Mr. Crimmins presented an exhibit that showed different iterations of the site plan to show how the applicants responded to feedback from the public. The total impact in the buffer is 110,110 sf now. The initial concept had 146,157 sf of buffer impact and 272 units. This iteration has a 28,385-sf reduction in impervious surface and the density has been reduced to 152 units. The applicant has to satisfy 6 criteria to get a wetland CUP. Mr. Crimmins reviewed their responses to each one. The first criteria is that the land is reasonably suited to the use, activity or alteration. This property meets the zoning and doesn't require any relief. The site is previously disturbed. The site currently has debris, invasive plants and rundown buildings. The proposed project will reduce impervious surface, enhance the buffer and provide public access to the pond. The second criteria is that there is no alternative location outside the wetland buffer that is feasible and reasonable for the proposed use, activity or alteration. The proposed development area has unique site conditions. There is the North Mill Pond, view corridors, a 15 setback for the railroad, and a 25-foot sewer easement. All of these unique site conditions put constraints on where the buildings could be located. The buildings were pulled further back from the existing conditions. The parking was pulled away from the pond. The team has made a continued effort to reduce buffer impact and density. The third is that there will be no adverse impact on the wetland functional values of the site or surrounding properties. This property is a previously disturbed urban site. The project was designed in a manner that conforms with zoning and will reduce traffic. It will provide public access to the pond. There is no adverse impact to the wetland functional value because it is largely previously disturbed upland. The project will reduce buffer impact and remove invasive plants. It will provide added value for public open space. The fourth is that alteration of the natural vegetative state or managed woodland will occur only to the extent necessary to achieve construction goals. The only alteration

in the 25-foot buffer will be to remove the invasive plants. There will be stabilization practices put in place and the outfalls will be removed. The fifth is that the proposal is the alternative with the least adverse impact to areas and environments under the jurisdiction of this Section. The applicant has worked to reduce buffer impacts in response to feedback. They are conceding allowed density and pulling footprint from the pond. There will be 1.6 acres of public open area. There is a 2/3-acre net reduction in the buffer. The applicant will remediate any environmental conditions in accordance with the law. That sixth is that any area within the vegetated buffer strip will be returned to a natural state to the extent feasible. The plan is to remove invasive plants and the only other disturbance will be to the storm water outfalls that currently discharge untreated stormwater.

Steve Pernaw from Pernaw and Company commented on the traffic. Mr. Pernaw prepared the original traffic study in 2018. The City asked them to look at three intersections on Bartlett St. and Islington St. The original project generated 53 trips during the pm peak hour. In October 2018 TAC asked for counts from the brewery and doggy daycare. There will be a reduction with this project because the brewery and doggy daycare will no longer be there. There is a reduction of 19 trips in the pm peak. The trip generation estimates were derived from the ITE. More people are working remotely, so these estimates may be on the high side. The City required the West End Yards project look at the same intersection for Bartlett St. with this project's 2018 numbers. The redesign of Bartlett St. was based on those numbers. TEC performed the peer review and they concurred with the methodology and trip generation estimates. They agree it will be reduction.

Robbi Woodburn from Woodburn and Company commented on the landscape plan. The proposed site plan includes a public park and the North Mill Pond greenway. There is a large community space planned for the east end of the trail. This will provide a complimentary stopping place on the west end of the trail. The round rain garden will recall the roundhouse. A bridge will cross the rain garden. The hope is to recycle wood and stone elements from the turn table in the construction. There will be seating options for the public. In the space will be signage describing history of site and roundhouse. There will be landscaping in the courtyard between buildings B and C. The grades along the face of the building will be raised to provide planting opportunities to soften and screen the buildings. Plant beds will have drifts of native ornamental trees, shrubs, and ground cover. Most species planted in the buffer will be native. Invasive species will be removed. Most of the existing vegetation is invasive plants. The Norway Maples will remain to provide screening and canopy cover. The plan includes a fescue grass mix and a native conservation seed mix. The buffer plantings will help reduce runoff and the rain garden will provide a pollinator habitat. All of the plantings will provide a better wildlife habitat. This plan includes an extensive landscaping effort, and the proposed park will enhance the experience of the trail and pond. The project will create a beautiful and sustainable part of trail.

Mr. Crimmins commented that they have addressed all of the requirements to grant all permitting for the project. The proposal meets zoning requirements and achieves

goals of the Master Plan by providing public access along the pond. The presentation reviewed the site constraints. There will be a significant reduction in the impervious surface. It provides good public benefit with the urban park and community greenway space. The applicant has responded to feedback. The latest proposal will provide additional housing stock while reducing density from the previous proposal. Traffic will be reduced. There are improvements to the buffer and stormwater management. This plan supports many Master Plan goals.

Mr. Clark commented that there were several different values for the buffer improvement area in the application. The DES section says 22,384 sf, the agenda says 28,792 sf, and the impact plan says 28,385 sf. Mr. Crimmins responded that the local level number is referring to the net buffer improvement. The impervious vs. wetland impact is defined differently depending on the application. The total reduction is 28,385 sf. There is a pocket wetland that was created with the dilapidated condition of the roundhouse. There is virtually no function to that wetland. It doesn't fall within the CUP jurisdiction. It is outside of the 100 buffer and the size is too small.

Mr. Clark questioned if there was any discussion with the City to see if there was a way to contribute directly to a City project instead of contributing to the ARM Fund. Mr. Crimmins responded that they have not had that discussion. It is a DES policy to pay into the ARM Fund. The City would have to consult with DES about receiving funds. Mr. Clark commented that it would be good if that could stay within the community.

Mr. Clark questioned if they would have to go down to the native ground for the garage. Mr. Crimmins responded there would be minimal excavation. There will be soil removal for the basement and foundation construction. Mr. Clark questioned how tall the current brewery building was. Mr. Crimmins responded that it was approximately 30 feet.

Mr. Clark commented that it was disappointing that the connection of the greenway to Bartlett St. ends in the middle of the site and becomes a 6-foot sidewalk to the road. Mr. Clark questioned if there was any way to increase the size of the 6-foot sidewalk to match the alignment of the 10-foot path. Mr. Crimmins responded that they can't widen the foot print any more. The goal was to pull further away from the pond. Angled parking may gain another foot, but the parallel better works better for the flow of the site. Mr. Clark commented that the plans did not show anything at the other end of the path and questioned what plan for that lot was. The original concepts included some development on that lot. Now it ends at that lot line and all of the utilities are stubbed off. Mr. Crimmins that the project has committed to providing an easement from the development lot to Maplewood Ave. to allow the path to occur. Mr. Clark questioned why it was not included as community space. Mr. Crimmins responded that there was no development planned, they were committing to providing the easement.

Chairman Legg questioned if the applicant would commit to not using fertilizer. Ms. Woodburn responded that loam generally lacks organic material. Over time healthy plants need healthy soil and nutrients. That will need to be addressed with compost. They can treat the site organically and not use chemicals, but they will need to be able to enhance the soil to keep it healthy. They will follow the ordinance about fertilizer use in the buffer as well.

Ms. Henkel questioned if there would be lighting on the greenway. Mr. Crimmins responded that the greenway would not have lighting.

City Council Representative Whelan questioned how much fill will be brought into the buffer. Mr. Crimmins responded that they will assess if soil could be reused to balance the site. Fill will be brought in if needed. City Council Representative Whelan noted that the tallest building was 50 feet. Mr. Crimmins confirmed that was correct and noted that it complied with zoning. Building A will be 49.1 feet, B will be 49.1, and C will be 49.2. The grade itself will be 12-13 and the finished floor will be 17.5. That will allow for the underground parking. City Council Representative Whelan questioned if the new FEMA maps were accounted for in this plan. Mr. Crimmins confirmed they were. The City zoning ordinance has extended the flood zone and requires the building to be built up to 2 feet above the flood plain. The building and public areas will be above the flood plain. City Council Representative Whelan questioned what the width of the fire access path would be. Mr. Crimmins responded that the path is 10 feet wide. It was expanded on the corners to allow for the fire trucks to turn and then brought back to 10 feet.

Chairman Legg questioned what portion of the buildings were in the 50-foot buffer. Mr. Crimmins responded that none were in the 0 to 50-foot buffer. There are portions in the 50–100-foot buffer.

Mr. Chellman questioned if there was buildable land on the parcel outside of the buffer. Mr. Crimmins responded that there was, but the constraints were highlighted on the plan. There is upland out there but the view corridors, 25-foot sewer easement and railroad setback limit the options. This project was located in the upland outside of the constraints. If the buildings are pulled back, then they would be putting pavement in the buffer. The entire project cannot be pulled back because of the sewer easement. Mr. Chellman questioned how this project was the least adverse impact. Mr. Crimmins responded that this was previously disturbed upland. The project will be improving the buffer, reducing the existing impervious surface, and reducing the footprint by 50%. Mr. Chellman questioned if they thought any reduction in a nonconforming use is a reduction and should be allowed. Mr. Crimmins responded that based on how the zoning is written in 10.1017.24 work is allowed in the buffer with a CUP. It requires the removal of impervious surface at least equal in area. This project is far exceeding that requirement. It is removing 2/3 of an acre of impervious surface and reducing 50% of the footprint. Mr. Chellman questioned if they thought they were allowed to put buildings in the buffer. Mr. Crimmins responded that they were allowed to do work in the buffer. This is a previously disturbed buffer area.

They are not allowed to increase impact. This project will be a significant improvement. Mr. Chellman questioned if building in the disturbed area was considered further impact. Mr. Crimmins responded that it was not because the buildings will be pulled back and the buffer will be improved.

Mr. Gamester requested a walkthrough of the stormwater treatment system. Mr. Crimmins responded that the runoff that hits impervious surface will be directed to the catch basins with oil separator hoods. One goal is to reduce the peak rate. Treatment is focused on the first inch of runoff because that is where the grit and oil get picked up. The sediment will settle out and oils will be separated in the system. Runoff will flow into the detention system. That is designed to hold the water and slowly release it over 24 hours. That will allow temperatures to regulate underground before it discharges to the pond. The slow discharge goes through a stormwater treatment unit. Runoff in the park area will infiltrate through the rain garden and other plants. The multi-use path will have porous asphalt. The pathway underdrains will be lined because of the high-water table. Those drains flow out into the drainage system. The courtyards will have yard drains that will flow to the stormwater treatment systems. There will be stormwater improvements on the commercial side of the plaza as well. Right now, it sheet flows into the pond. The redesign will curb the roads and runoff will go through the treatment units. Currently the lumber area catch basin ties into the sewer system. That will be removed.

City Council Representative Whelan noted that the zoning ordinance talks about a living shoreline strategy and questioned if that would be part of the project. The North Mill Pond is a critical habitat. Mr. Crimmins responded that they were not proposing any work in the North Mill Pond. They will be granting an easement to the City from mean the high-water line to the 50-foot buffer. That will afford the City the ability to do a living shoreline along that stretch if they chose to. This design stays above the mean high water. City Council Representative Whelan commented that they could pull the project back from the buffer. The zoning ordinance is not based on economics; it is based on protecting the wetland.

Chairman Legg questioned what the frequency of large truck deliveries to Ricci was, and if they would be using the sliding gate near the turnaround at edge of the property. Mr. Hayes responded that they receive supplies totally by truck Monday through Friday from 8 am-2 pm. The site received 8-10 trucks a day. They do deliver through the sliding gate. Chairman Legg questioned if signage was proposed for the public park. Ms. Woodburn responded that there would be signage near the rain garden. Chairman Legg commented that there should be signage on the Ricci Lumber side as well. Mr. Crimmins responded that could be added. Chairman Legg commented that it should be listed in the list of City parks as well, so people know it is there. Ms. Walker responded that this will be part of the North Mill Pond Greenway and they would ensure people know about the public amenity. Chairman Legg commented that they should name the park.

Mr. Harris questioned what studies have been done for the 100-year storms impact. Mr. Crimmins responded that the drainage analysis accounts for a 100-year storm event. Mr. Harris questioned if Ricci Lumber had experienced any flooding issues. Mr. Hayes responded that they have not had flooding from the North Mill Pond.

Mr. Chellman commented that he did not think the zoning permitted building in the 100-foot buffer. The 6 criteria do not allow anything that would be an adverse impact. Building in the 100-foot buffer is an adverse impact. Mr. Crimmins responded that they read the ordinance differently. The ordinance does not allow a net increase in impervious surface. Everything in this project is an improvement. It is reducing the footprint in the buffer by 50%. Anything proposed is improvement over what exists. Mr. Chellman appreciated the improvements but felt constrained by the way the ordinance was worded. The only way satisfy criteria number 5 is to put in a project with the least adverse impact. That is a separate calculation than the impervious surface. This project is putting in new buildings. One was scaled back to be out of the 50-foot buffer. If that was done for all the buildings, then they could be out of the 100-foot buffer. Then the project would conform completely. Mr. Chellman questioned why that could not happen. Mr. Preveti responded that the zoning methodology dictates how an applicant approaches a project and the land use boards review it. The applicant's analysis was based on that, and all of the 6 criteria were addressed based on that methodology. The least adverse has to be based on what is allowed for permitted use on the site. Mr. Preveti reminded the Board that they scaled down as much as possible. The project still needs to be feasible. The Conservation Commission reviewed this project in depth. They saw the application 5 times and voted to recommend approval 6-1. Mr. Chellman commented that the Master Plan included goals about strengthening language around land use and conserving the buffer. Mr. Chellman questioned if this project could be scaled back outside of the 100-foot buffer. Mr. Preveti responded that would make the project no longer viable. They have to balance the impacts on the buffer and having a viable project. If there is no project, then there is no park or greenway. Mr. Chellman questioned if viability meant the economics of the project. Mr. Preveti confirmed that was correct.

Mr. Clark commented that the wetland delineation called out eroded shoreline along entrance way and questioned why the project was not addressing that. Mr. Crimmins responded that the erosion was in the wetland. This project is not proposing any work in the wetland. All of the improvements in the upland will help improve the erosion. Mr. Clark commented that people will still be walking along the banks. The erosion will be an ongoing issue. Ms. Woodburn responded that the areas beyond the walkway will have long grasses that will only be mowed 2 times a year. That will discourage people from getting too close to the bank. This project is doing as many improvements as possible above the bank. Doing a living shoreline is a whole different project. The City can do that because of the easement.

## **PUBLIC HEARING**

Charlie Mareno owns property in the West End Neighborhood. The February plan had a pedestrian easement at the end of the long parking lot at the railroad. It would connect to the Cabot St. entrance. It is important for the community to have access to the trail. The railroad blocks that. That easement is not in the current version of the plan. Mr. Mareno questioned what was going on with the lot near Maplewood Ave. There is a conservation easement for that, and it is implied that it would remain as open space. The landscape plan shows that the Norway Maples will remain. The applicant should plant more trees to replace the Norway Maples. Once the new trees grow, the Norway Maples should be removed.

Jonathan Sandberg of 160 Bartlett St. spoke in favor of the proposed development. This neighborhood used to be run down. Over the years it has improved and that is good for the community. This project will transform a wasteland into much needed homes and outdoor space. It will allow the neighborhood to have access to the pond and improve biking and walking in the area. Some worry about density being bad for traffic and conservation. This project will add to the residents who care about the pond. Right now, the property is covered in litter. The new residents will care for it and keep it clean. This project will reduce impervious surface, restore the buffer and treat stormwater. This is the best neighborhood to add density to because it is so walkable.

Ted Jankowski of 27 Franklin St. commented that he was the member of the Conservation Commission who voted against this approval. The zoning ordinance says that economic reasons alone are not a reason to grant a CUP. The submission of a plan to compensate for the impervious surface in the buffer does not guarantee a CUP. Mr. Jankowski did not think the project met the criteria. The Planning Board should look at the bonus incentive requirements. They are trading square footage of land for more building height. That is an economic benefit to the builders. It does not base the square footage on the value of land. The project is giving the City property that cannot be built on and they are getting an extra story.

James Beale of 286 Cabot St. questioned if the project met the criteria for a CUP. The Master Plan includes a goal about new developments complimenting and enhancing the surrounding area. There are also goals about protecting community assets. This project encroaches. It does not enhance the North Mill Pond. The setbacks, easements, view corridors, and North Mill Pond were all known factors before the land was purchased. One of the criteria talks about no adverse impact to the function and value of the wetland and property. The functional values will be impacted. Another criteria talks about alteration only to the extent necessary. There will be 4 acres of land with earth moving equipment and new foundations installed.

Liza Hewitt of 169 McDonough St. commented that the CUP related to the buffer does not meet the criteria for the permit. The 100-foot buffer is suited for wildlife habitat not buildings. This project can be constructed outside of the 100-foot buffer. Habitat destruction will occur. They have chosen to not build outside out of buffer to yield maximum economic return. At the February Conservation Commission

meeting there was never any discussion about the criteria specifically. The criteria was only brought up by Mr. Jankowski who said the project did not fit the criteria. The abutters were not given notice about the application for shared parking.

Melissa Door of 304 Cabot St. appreciated the cooperation of the developers and the residents. The Planning Board should consider what precedent they may be setting for all other developers coming before the Board with a project in the buffer. Residents along the pond have been denied smaller projects. Parking in this area is already an issue. They are allocating 1.3 parking spots per unit and talking about the public coming to enjoy the path or park. It would be useful to have assigned parking spots and visitor parking. That may encourage people to utilize the parking and development itself.

Councilor Paige Trace of 27 Hancock St. spoke as a resident of Portsmouth. The height as it currently stands in the proposal would be different if fill is added for the parking. Ms. Trace questioned why the road was not going all the way out to Maplewood Ave. like it was in the original proposal. Ms. Trace questioned why the greenway path was not going all the way out past Ricci Lumber. The driveway is very busy and there is no separation for bikers and walkers. The North Mill Pond is an estuary and impaired waterway. The developer should be a good neighbor and help the waterway. Someone proposing a controversial development in the neighborhood should be protecting the pond and wildlife.

Byron Matto of 17 Fields Rd. spoke in favor of the project. The Greenway along the North Mill Pond would be a good benefit to the City. This project is a win for the pond compared to what is there now. It will remove impervious surface, add a rain garden, remove invasive plants, and treat stormwater. The Conservation Commission voted 6-1 to approve it for those reasons. Adding 152 housing units to the City will help the housing crunch. Density is green in some ways. Putting units in a walkable area reduces the carbon footprint. They can kick this project back to the drawing board, but at some point, they won't be back.

Edward Rice of 25 Morning St. commented that he was concerned for the wetland. The 100-foot buffer should be protected. The buildings are encroaching upon the 50-foot buffer, and they won't move it back because of financial reasons. Traffic is another big element to be concerned about.

Elizabeth Bratter of 159 McDonough St. commented that these apartments are designed to provide habitats for humans. The current large habitat and biodiversity will be removed. The project does not provide any trees, shrubs or ground cover in the 100-foot buffer except for one single rain garden. It is a simple land management practice to protect and conserve natural resources. They should maintain an ecological balance. Cutts Cove has been overdeveloped and is now overrun with Canadian Geese. This happens when the buffer is not properly enforced. There is no reason to allow this within the 10-foot buffer. The buffer should be filled with habitat. This project is not good enough for the wetland buffer.

Chris of 77 Hanover St. spoke in favor of the project. There have been a lot of objections claiming this development will destroy a vibrant ecosystem and natural habitat. This area is only accessible via the railroad. The site is filled with garbage, abandoned buildings, and a homeless encampment. This space is in a bad condition. The developers have compromised and modified the plan. There are no zoning variances requested for this plan. The size and height are in compliance. They are donating land to the City that is not accessible to the public now. That is valuable. This project will clean up the property and provide environmental protection. It will also help Portsmouth address the housing issue.

Second time speakers:

John Wycoff of 135 Sparhawk St. questioned if school buses had been considered in this plan. Families will live there. Traffic will be dependent on a roundabout with parking. There are problems with the parking and traffic situation. There is no study on the number of children they might expect with this project. The lumber yard needs to be screened from the project. Most of the problems are directly related to the density of the project. This project should be reduced and there should not be any three-bedroom units.

Elizabeth Bratter of 159 McDonough St. commented that she supported a residential development on the site, but it should be out of the 100-foot buffer. The project should restore the 100-foot buffer to provide an undisturbed habitat. The applicant needs a CUP for parking and that shows it is at least 15 units too big. Splitting lots is allowed. If the lot is bigger than 5 acres or 5 buildings, then they are required to follow more strict wetland regulations. There is no parking analysis for the CUP. It was not discussed at TAC. The shared parking needs to be reserved by a covenant. There is no easement for that. The parking should be assigned. 150 units equals to 304 cars. Those cars will end up in the Islington Creek Neighborhood. There is no landscape plan for the road from Bartlett St. to the brewery. The impervious surface is overstated. None of the culverts were included as impervious. The installation of the culverts requires work in the tidal buffer. Restoration is required. The landscape plan shows mowing in the 25-foot buffer. Pavement in the 100-foot buffer should be porous. The application does not meet the spirit of the wetland ordinance. This project is not protecting habitats and is not maintaining the ecological function. There are no clusters of trees or bushes. There is no habitat restoration except for the one rain garden in an area of high human contact. If this moves forward, then buildings B and C should be out of the 100-foot buffer. The community space landscaping should provide shade and noise reduction. The greenway will be very popular, but it will be noisy. The granite seating areas will have negative impacts on the pond. Noise will be projected and reflected off the pond. No acoustic music should be permitted in that area. It should be quiet. There should not be any bushes or trees in the view corridors.

James Beale of 286 Cabot St. commented that the Planning Board should consider the precedent they would set for any coastal development happening in the state of New Hampshire. The parking on the other lot should be deeded to the new structure. The

greenway seems to terminate at the cul-de-sac. It does not go all the way out to Bartlett St. Parking will extend to the Islington Creek Neighborhood. That is a concern.

Liza Hewitt of 169 McDonough St. commented that all new buildings shall be located to maintain existing public views with terminal vistas. The view corridor must be maintained for the minimum width of the right of way. Buildings A and B have a 7–8-foot wall that steps up from the parking. There are also 6 crab apple trees proposed. Both of those will block views for Dover St. The basement parking is above grade and will impact the height of the buildings. They are packing in around 8 feet of fill. That is when the height of the building starts its count. The buildings will be 6 feet over the 50-foot limit.

Paige Trace of 27 Hancock St. commented that there were 12 parking spaces in the public way. Those spaces should be deeded in perpetuity with the development. Ms. Trace was concerned about children trying to go to school while navigating a busy road. Ms. Hewitt's comments about the grade of the buildings were concerning. Residents have the right to ask for this to be out of the buffer zone. The developers are saying they can't do it because of a financial situation. The City needs housing, but at what expense.

Frank Hire of 250 Broad St. commented that this property has sat dormant for so many years with industrial buildings and the railroad. This is taking an underutilized property and trying to bring it life to. There is an opportunity to create greenspace along the North Mill Pond. It will provide the public with a way to get from the west end to downtown in pedestrian friendly way. The project will create housing that Portsmouth needs. The alternative is to leave this property as a dormant industrial site. It is not a viable biodiversity zone now. It is not a friendly habitat. This is a good opportunity to create habitat and provide housing for families and young couples. Mr. Hire supported the project.

Councilor Esther Kennedy of 41 Pickering Ave. spoke as a resident. Ms. Kennedy disagreed with the previous speaker. If the site was left like this it would still be an estuary in 100 years. This is one of the areas that still has the horseshoe crabs. This project should be out of the 100-foot buffer. Ms. Kennedy encouraged the developers to the 6 criteria and question how they can get it right.

Melissa Paly commented that she was the Great Bay Piscataqua Waterkeeper with the Conservation Law Foundation. There is a lot about this project that is really great. The developer is doing great things for the storm water management plan. That will improve the water quality. There is no doubt that the water quality from this project will be a vast improvement over what is going on currently. The concern everyone is wrestling with is the impact to the 100-foot buffer. There is no one size fits all because site conditions and objectives need to be considered. The ordinance is set to 100 feet, but there is nothing magical about 100 feet. One recommendation to reduce runoff and stabilize the banks is 164 feet. The 100-foot buffer is a minimum to protect habitat and water quality. Granting a waiver will compromise functions of the buffer. However, there is a tremendous benefit through stormwater management and other public benefits like the greenway.

There is a lot of good in this project. However, the 100-foot setback issue is a question. There is a spectrum and there will be impacts as they chip away at the buffer.

Councilor Petra Huda of 280 South St. spoke as a resident. Ms. Huda did not support this project. It does meet the 6 criteria. The developers should remedy the invasion of the 100-foot buffer.

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 extend the meeting beyond 10:30 p.m., seconded by Mr. Clark. The motion passed unanimously.

Mr. Chellman moved to split the agenda, schedule a meeting for April 22, 2021 and continue remaining agenda Items IV, V, VI and VII to that meeting, seconded by Ms. Henkel. The motion passed unanimously.

Mr. Chellman to discuss and vote on Item III(B) before Item III(A), seconded by Mr. Gamester. The motion passed unanimously.

Mr. Gamester moved to grant the Wetland Conditional Use Permit as presented, seconded by Ms. Henkel.

Chairman Legg commented that some people in the public hearing suggested denying the request because part of the project was in the 100-foot setback. In the Chairman's opinion the ordinance allows that. More importantly, at the Saturday meeting City Attorney Bob Sullivan articulated the 6 requirements that are necessary to build within the 100-foot setback. If the City Attorney did not believe this could be built in the buffer, he would have said that. This Board has always interpreted the ordinance such that the application is subject to the 6 criteria and appropriate mitigation when building in the buffer. If they chose to change the rules with this applicant, then it would create some heartache with City Council and others.

Mr. Gamester commented that building and activity was allowed in the buffer so long as the mitigation or conditions proposed met the criteria. The Board has addressed a number of CUPs for work in the buffer. It is hard to set a precedent because the Board takes them project by project and reviews each property separately. If someone came in with a similar proposal in a different part of town it would be reviewed separately. Two really good things are happening with this project. The first is that the traffic will be reduced. The second is there will be a huge improvement to the buffer. It is a previously disturbed site with stormwater sheet flowing into the pond. This project will treat the stormwater. There will be a reduction of impervious surface and removal of invasive species. This ends up being a better piece of property with the project on it because of

the state the land is in currently. Mr. Gamester noted that he would be voting in favor of the project. Building in the buffer is permitted, and this project meets the 6 criteria.

Mr. Chellman commented that he interpreted the criteria differently. The project has to pass the 6 criteria. The ordinance also lists what is allowed in the buffer. That includes uses that don't involve construction. The mitigation of impervious surface doesn't guarantee a CUP. The applicant did not answer the question about an alternate location. There is an alternate location. The criteria about least adverse impact is a tough standard. Mr. Preveti noted that they could not meet it because of economics. That is not a reason to allow a CUP. Mr. Chellman thought it was a great project, but the size and location of building is in the buffer. Each application stands or fails on its own merits. These regulations do not support this application. The buildings should be pulled back. The application does not conform with zoning and does not support the granting of a CUP.

Mr. Gamester commented that he also heard economic viability as a reason. However, if the buildings were pulled back, then the parking would need to be moved. It is preferable to have that flat surface closer to the railroad. The building and density are allowed by right in one section of the ordinance. Given the constraints and what is allowed by the ordinance, this is the best option.

City Council Representative Whelan agreed with Mr. Chellman. These could be smaller buildings and be outside the 100-foot buffer. Mr. Preveti said that they cannot because of the economic consideration alone. That is not a sufficient reason for granting a CUP. It's a good project but it is too big. This should not encroach on the buffer. There are other ways to do this. The project has been revised 4-5 times and could be revised again to be a great project.

Mr. Harris commented that the project was a net gain compared to what's there today, but the environment is too important. There is so much development going on. The 100-foot buffer is important. This application fails the criteria for a CUP. The only alternative is shrinking the property or moving it around a little.

Mr. Clark agreed. There are a lot of constraints, but they could make it work outside of the buffer. Mr. Clark thought they were doing more shore stabilization efforts and that is not the case. It is pretty obvious the shore needs work.

Chairman Legg commented that Peter Britz was present to help the Board understand to Conservation Commission's conversation around this application. Some of the commenters in the Public Hearing suggested that the Conservation Commission did not give this project proper review. Chairman Legg asked Mr. Britz to go through the various meetings to educate whether the Commission did their job correctly. Mr. Britz noted that the Conservation Commission saw this application at least 5 times. It changed quite a bit from start and finish. The Commission requested to see improvement in the buffer and there was a lot of improvement. They really liked the stormwater improvement to the project. The Commission requested a porous multiuse path and that was updated. The Commission did go through the 6 criteria. People need to attend the

meetings and refer to the Staff Memos. They are aware of the criteria and understand it. The buffer is not a setback where nothing can go in. To put something in the buffer the applicant has to prove a net improvement at the end of the day. That is subjective. The buffer is not a setback. That is an important point the Board has to consider. The applicant reduced size over and over. They have dealt with a lot of constraints. The result is an improved situation and a public interest benefit. That is considered as well. Right now, the lot is private property and derelict. The planned vegetation will be beneficial to the site. The shoreline point is a good one. It has been raised a couple times and could be addressed more. The City is working to have some living shoreline components at the community space by Raynes Ave. The City is looking for grant funding to do more along the whole pond. The application evaluation is a balancing act. They weighed the improvements in storm water, buffer, and public interest. The Conservation Commission doesn't look at the height or other technical aspects. They assess the environmental impact.

Mr. Clark questioned if they were paying into the ARM fund if it would be possible to keep that in the community. Mr. Britz responded that it would be good to try to do that with a City project that has wetland impacts. The applicant has to push that forward. It is challenging to get an ARM fund project as direct mitigation payoff. They tried to do it on Cutts Cove but ended up getting grants through the ARM fund rather than direct mitigation.

Mr. Chellman noted that the developers could leave the parking where it was located and make the buildings smaller. That would not change the parking or circulation. This proposal is not the least adverse impact and there is an alternate location. They are not pursuing it because of economic reasons. As submitted this project does not meet the ordinance.

Mr. Pezzullo commented that the ordinance gives the Board the opportunity to evaluate the pros and the cons of the project. The sewer line on the property cannot be moved. This project can meet the regulations if the Board comes to that conclusion.

Chairman Legg noted that he would support the CUP. They need to look at the project in its totality. Chairman Legg agreed with Mr. Britz the 6 criteria are an interpretation. There is no absolute on any of these. The Conservation Commission spent 5 meetings on this and recommended that this Board approve it. It is an urban water site that would be improved by this project. Ms. Paly's comments supported that. The stormwater runoff that is entering the tidal pond now compared to this project would be vastly improved in every way. If the property is left as it is now, then it is not going to get better. The totality of this project is good for the City. They should not let the perfect get in the way of the good. Overall, it is a positive project for Portsmouth and vastly improves an impacted site. It dramatically reduces impervious surface and improves stormwater treatment. It is disappointing that there will only be a 6-8-foot sidewalk to Bartlett St. instead of the full 10-foot-wide path. However, people will have a sidewalk. Chairman Legg noted that he would support the whole project and specifically this motion.

Mr. Chellman noted that Ms. Paly also said the 100-foot buffer should be considered a minimum. The Board has to follow regulations. The regulations say to the project has to comply with 6 criteria to get a CUP. By their own admission it doesn't. Chairman Legg disagreed. The developers presented a compelling case to show that it does. That is a matter of interpretation.

Ms. Henkel agreed with Chairman Legg. The entirety of this project will be a significant improvement to what is there now. A lot of community space that comes in front of the Board is not that meaningful. This is. It is the Board's job to interpret the projects and regulations. If it was just black and white, then a Board would not be needed. The City is getting a lot out of this. The buffer is not a setback. The project makes sense for the City. It will benefit the citizens and give people access to the water.

City Council Representative Whelan noted that Ms. Paly liked the stormwater improvements, but also stated that a buffer of 164 feet would be more impactful. If the developer made the buildings smaller, then it would be a better project. The Board needs to balance the give and take; however, the residents came out pretty strong on this. That counts for something. The project could be modified more to get to a happy medium.

Mr. Clark questioned what the ramifications would be if the CUP was denied. Ms. Walker responded that she could not speculate on how the developers felt, however they have been at this for 20 months. The Board is proposing a pretty major redesign to make the buildings smaller. It would greatly impact the viability of the project. There is no guarantee that denying the CUP would result in the developers coming back with a different proposal. It would be a denial. Postponing this and asking the developer to come back is a big change. It is better for the Board to act on this proposal. Based on how long they have been working on it, there is a strong chance the developer will not come back with another project. This is what the Board has to consider.

Mr. Gamester commented that there was no alternate location outside the buffer for the proposed use. These building density layout passes zoning. Ms. Walker makes a good point. The Board is talking about big changes. This is what the developers felt was the best project and they put it forward to the Board. Some on the Board sound like they want big changes. The Board should consider how they can make this project better than it is proposed. The developer probably would not accept moving the buildings out of the buffer, but other conditions could be considered. Chairman Legg questioned if they could accept less parking than was required to keep it out of the 100-foot buffer. Ms. Walker responded that would be asking them to submit a new request because they did not apply for that CUP. The CUP that is requested is for parking on a shared lot. It was discussed in TAC; however, this is what the developers think they need to meet market demand.

Chairman Legg commented that some Board members did not like the idea of allowing building in the 100-foot buffer at all. If that's true and this were to get denied, then it may be likely no project goes forward. The City would lose out on 152 apartment units.

Chairman Legg questioned if the Board members would change their mind and allow them to build the same size building and with reduced required parking.

Mr. Pezzullo commented that the sewer line easement would prevent them from moving the buildings, so that would not be a solution.

Mr. Chellman noted that this project was not the least adverse impact. Mr. Gamester commented that the proposed use was being placed because of the constraints. Mr. Chellman responded that the only constraint was economics.

The motion passed in a 5-3 vote. Mr. Gamester, Mr. Clark, Ms. Henkel, Mr. Pezzullo, and Chairman Legg voted in favor. Mr. Chellman, Mr. Harris and City Council Representative Whelan voted against.

Mr. Gamester moved to grant a Conditional Use Permit for 210 spaces of shared parking located on the development lot (Map 157 Lot 1) and the private road, seconded by Ms. Henkel with the following stipulation:

1. A shared parking arrangement shall be secured by a covenant in a form acceptable to the City's Legal and Planning Departments to be recorded at the Rockingham County Registry of Deeds.

Mr. Gamester noted that parking CUP was pretty straight forward. Chairman Legg noted that several public speakers interpreted this as a reduction request, but there will be a covenant to ensure the parking is still shared. Ms. Walker commented that the ordinance allows parking on separate lots with the primary condition that there is a long term parking agreement to allow the sharing to continue.

The motion passed unanimously.

Mr. Gamester noted that in terms of the site itself it's a good project. The previous versions were too big. The applicants have done a good job with it and agree with all the conditions.

Mr. Chellman questioned if it was appropriate to add a stipulation about the vegetated buffer strip and shoreline treatment. Mr. Clark agreed that it was something that had to be addressed. Ms. Walker noted that the applicant can work with the Planning Department to address restoration in the area.

City Council Representative Whelan commented that they could partner with UNH scientists on a project like this. Ms. Walker agreed that there were resources out there that would be helpful.

Mr. Clark noted that they will need to do restoration at the 2 outfalls, so it may be a good opportunity to partner with UNH on that and the City can pick it up from there. Ms. Walker noted that they will have to mitigate around the outfalls as part of the DES permits. It was

fine to focus on that, but focusing on the area between buildings B and C may be a good way to go.

Mr. Clark suggested getting a third-party report back on what could be done along the shoreline would be good. The applicant can provide a feasibility study on what could and should be done along the whole shoreline. Mr. Chellman added that the City should ensure they get access and participation from the developers for this.

Mr. Gamester noted that it was good to see a reduction in traffic. Chairman Legg agreed. This project gone through changes and it meets the ordinance in every respect. There are no waivers required and that is unusual for a project like this. This project is well done.

Mr. Clark commented that he was in favor of the underground parking, however, it was frustrating the way the current ordinance is written. The height does not start at natural grade it starts at finished grade. They complied with ordinance, but the buildings will look higher than 50 feet. It is disappointing that the 6-foot sidewalk is not wider. It is unclear what the plan is for the adjacent parcel. The utilities are all stubbed out and could be continued out.

Mr. Gamester moved to grant Site Plan Review approval, seconded by Ms. Henkel with the following stipulations:

Conditions Precedent (to be complete prior to building permit issuance)

1. The applicant shall coordinate with the City's third party consultant to complete a Water Capacity Analysis using the City's capacity modeling and shall modify the water service design as required in coordination with the City's Water Division and subject to final review and approval by DPW and the Fire Department. The analysis of water demand shall include irrigation in addition to domestic use.
2. For the Bartlett Street water line replacement and paving project which shall be undertaken by the City, the applicant shall contribute \$65,000. The contribution shall be returned to the developer if the improvements are not constructed, under construction or designed and scheduled for construction by December 31, 2023.
3. The applicant shall update the recordable site plan to note that the property owner(s) responsible for the private road shall remove and maintain vegetation along the Bartlett Street frontage consistently to ensure that sight lines remain unobstructed at the site access intersection.
4. The landscaping plan shall be updated to replace the American Elms with *Nyssa Sylvatica*, shall reference the City's planting details (available on the City's web page -- <https://www.cityofportsmouth.com/publicworks/parksandgreenery/urban-forestry>) and shall note that a watering plan shall be provided for a minimum of one season.
5. The applicant shall prepare a Construction Management and Mitigation Plan (CMMP) for review and approval by the City's Legal and Planning Departments.
6. The applicant shall agree to pay for the services of an oversight engineer, to be selected by the City, to monitor the construction of improvements within the public rights-of-way and on site utilities including sewer, water, and drainage.

7. Owner shall provide an access easement to the City for water valve access and leak detection.
8. Any easement plans and deeds for which the City is a grantor or grantee shall be reviewed and approved by the Planning and Legal Departments prior to acceptance by City Council.
9. Wayfinding signage shall be added directing public access to the greenway trail and park subject to final approval by the Planning Department.
10. A note shall be added to the site plans to be recorded that no there shall be no performances or events involving amplification devices within the park and courtyard areas.
11. Plans shall be updated to remove any proposed trees located in the North Mill Pond Public View Corridor and otherwise confirm conformance with the requirements of Section 10.5A42.40 to provide a public view from Dover Street with a terminal vista of the North Mill Pond subject to final approval by the Planning Department.
12. Applicant shall agree to complete a feasibility study for restoration of the shoreline of the North Mill Pond along the frontage for this development project, to participate in a fair share based on owner's linear feet of wetlands impact along the shoreline, and grant access rights for any shoreline restoration efforts undertaken by the City in this area.

#### Conditions Subsequent

13. The Engineer of Record shall submit a written report (with photographs and engineer stamp) certifying that the stormwater infrastructure was constructed to the approved plans and specifications and will meet the design performance;
14. Subject to final review and approval by the DPW, the applicant shall add signage at the site driveway indicating that trucks may not turn right when exiting the site access road;
15. A stormwater inspection and maintenance report shall be completed annually and copies shall be submitted to the City's Planning and Public Works Departments.

The motion passed unanimously.

Mr. Gamester moved to grant Preliminary and Final Subdivision Approval for a Lot Line Revision, seconded by Ms. Henkel with the following stipulations:

1. Applicant shall provide documentation of ownership rights and responsibilities for the private driveway to be improved and converted to a private road.
2. Property monuments shall be set as required by the Department of Public Works prior to the filing of the plat.
3. GIS data shall be provided to the Department of Public Works in the form as required by the City.
4. The final plat and any easement deeds shall be recorded concurrently at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.

The motion passed unanimously.

- B. 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.

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

This motion was made under Old business Item A.

- C. 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 a Lot Line Relocation as follows: Tax Map 157, Lot 1 increasing in area from 61,781 s.f. to 205,804 s.f.; Tax Map 157, Lot 2 decreasing in area from 102,003 s.f. to 81,645 s.f.; Tax Map 164, Lot 1 increasing in area from 51,952 s.f. to 52,289 s.f.; Tax Map 164, Lot 4-2 decreasing in area from 249,771 s.f. to 119,519 s.f. and the existing right-of-way increasing in area from 69,624 s.f. to 75,792 s.f. 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.

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

This motion was made under Old business Item A.

#### **IV. PUBLIC HEARINGS – NEW BUSINESS**

*The Board's action in these matters has been deemed to be quasi-judicial in nature.*

*If any person believes any member of the Board has a conflict of interest, that issue should be raised at this point or it will be deemed waived.*

- A. The request of the **Islamic Society of the Seacoast Area, Owners**, for property located at **686 Maplewood Avenue** for a second 1-year extension of Site Plan Review Approval to construct a 2-story building for religious assembly with a building footprint of 3,880 s.f. and gross floor area of 5,333 s.f. with related paving, lighting, utilities, landscaping, drainage and associated site improvements that was

originally granted on April 18, 2019 and was granted an initial 1-year extension on April 9, 2020.

**DISCUSSION AND DECISION OF THE BOARD**

This item was deferred to the April 22, 2021 Planning Board Meeting.

- B. The application of **The Martha B. Masiello Revocable Trust of 2004, Owner**, for property located at **239 Gosport Road** requesting a Wetland Conditional Use permit in accordance with Article 10 Section 10.1017 of the Zoning Ordinance to permit, after the fact, yard disturbance including grading and fill of approximately 4,790 square feet and installation of 350 square feet of new impervious surface in the wetland buffer. All work was completed by a prior owner. Said property is shown on Assessor Map 224 Lot 10-10 and lies within the Single Residence A (SRA) District.

**DISCUSSION AND DECISION OF THE BOARD**

This item was deferred to the April 22, 2021 Planning Board Meeting.

**V. PUBLIC HEARINGS – CITY COUNCIL REFERRAL**

- A. **REQUEST TO POSTPONE** -- Request of **Todd Buttrick, Owner**, for the restoration of involuntarily merged lots at **900 Middle Road** to their pre-merger status pursuant to NH RSA 674:39-aa. RIML 21-1 – **REQUEST TO POSTPONE**

**DISCUSSION AND DECISION OF THE BOARD**

This item was deferred to the April 22, 2021 Planning Board Meeting.

**VI. PRELIMINARY CONCEPTUAL CONSULTATION**

- A. The request of **Dagny Taggart, LLC, Owner** for property located at **93 Pleasant Street** requesting Preliminary Conceptual Consultation for a proposed mixed use development consisting of office space and 61 residential units that will involve the renovation of an existing commercial building and new construction of a 2 1/2 story building in the existing parking lot with associated site improvements. Said property is shown on Assessor Map 107 Lot 74 and lies within the Character District 4 (CD4) District.

**DISCUSSION AND DECISION OF THE BOARD**

This item was deferred to the April 22, 2021 Planning Board Meeting.

**VII. OTHER BUSINESS**

- A. The request of **4 Amigos LLC, Owner** for property located at **1400 Lafayette Road** requesting a 1-year extension of Conditional Use Permit approval for a Development Site according to the requirements of Section 10.5B40 of the Zoning Ordinance and Site Plan Review approval for the construction of a 53-unit Garden and Townhouse Style residential development consisting of 6 structures with a combined total footprint of 37,775 +/- s.f. and 122,000 +/- GFA with associated grading, lighting, utilities, stormwater management, landscape improvements and community space. The original approval was granted on April 30, 2020. Said property is shown on Assessor Map 252 Lots 7, 4 & 5 and lies within the Gateway Neighborhood Mixed Use Center (G2) District.

**DISCUSSION AND DECISION OF THE BOARD**

This item was deferred to the April 22, 2021 Planning Board Meeting.

- B. City Council referral regarding acceptance of Chevrolet Avenue Easements

**DISCUSSION AND DECISION OF THE BOARD**

This item was deferred to the April 22, 2021 Planning Board Meeting.

**VIII. ADJOURNMENT**

Mr. Gamester moved to adjourn the meeting at 12:15 a.m., seconded by Ms. Henkel. The motion passed unanimously.

Respectfully submitted,

Becky Frey,  
Acting Secretary for the Planning Board