

**REGULAR MEETING
PLANNING BOARD
PORTSMOUTH, NEW HAMPSHIRE**

**EILEEN DONDERO FOLEY COUNCIL CHAMBERS
CITY HALL, MUNICIPAL COMPLEX, 1 JUNKINS AVENUE**

7:00 PM

January 27, 2022

MINUTES

MEMBERS PRESENT: Beth Moreau, City Council Representative; Karen Conard, City Manager; Ray Pezzulo; Peter Harris; Corey Clark; Rick Chellman; Greg Mahanna; Jane Begala; James Hewitt will be participating via Zoom Franco DiRienzo, Alternate; Andrew Samonas, Alternate

ALSO PRESENT: Peter Britz, Environmental Planner; Beverly M. Zendt, Planning Director;

MEMBERS ABSENT:

I. ELECTION OF OFFICERS

City Council Representative Moreau moved to nominate Corey Clark as Chair and Rick Chellman as Vice Chair, seconded by City Manager Conard.

City Council Representative Moreau commented that Corey Clark joined the Planning Board in June 2017 as an alternate member and was promoted to a full-time voting member last year by former Mayor Rick Becksted. As a Chief Construction Engineer at NH Environmental Services Mr. Clark has the skills to Chair the Planning Board. In his time on the Board, he has demonstrated the ability and expertise to support new members. His ability to listen and thoughtfully respond to members will make him a good Chair. Mr. Chellman joined the Board a year ago. His tenure is not long, but he has shown that he is knowledgeable in Board matters and would be serve well as the Vice Chair.

Ms. Begala commented that it was difficult to vote on this matter because they don't know everyone on the Board. There should be a better process to share information about the members and who is interested in running.

Mr. Harris commented that he had an alternate nomination for Chair. Mr. Britz commented that they needed to address the motion on the table first.

The motion failed to pass by a 4-5 vote. Mr. Harris, Mr. Chellman, Ms. Begala, Mr. Mahana, and Mr. Hewitt opposed.

Mr. Harris moved to nominate Rick Chellman as Chair and Corey Clark as Vice Chair, seconded by Mr. Mahana.

Mr. Harris commented that Mr. Chellman has been on the Planning Board for a year, has good knowledge of the State statutes, and an engineering background. Mr. Chellman will provide helpful and needed leadership going forward.

The motion passed by a 7-2 vote. City Council Representative Moreau, and Ms. Begala opposed.

II. APPROVAL OF MINUTES

A. Approval of the Planning Board minutes from the December 16, 2021 and the December 30, 2021 meeting.

City Council Representative Moreau moved to approve the minutes from the December 16, 2021, and the December 30, 2021, meetings, seconded by Vice Chairman Clark.

Chairman Chellman commented that “per view” should be “purview.” It is one word.

The motion passed by a 6-0-3 vote. Mr. Hewitt, Ms. Begala and Mr. Mahana abstained from the vote because they were not present at the meetings.

City Manager Conard moved to suspend the rules to vote to postpone the applications for 3400 Lafayette Rd., 325 Little Harbor Rd., and 3548 Lafayette Rd., seconded by Vice Chairman Clark. The motion passed unanimously.

City Manager Conard moved to postpone the applications for 3400 Lafayette Rd., 325 Little Harbor Rd., and 3548 Lafayette Rd., seconded by Vice Chairman Clark. The motion passed unanimously.

III. DETERMINATIONS OF COMPLETENESS

SUBDIVISION REVIEW

A. The request of **Austin Repair & Renovation LLC, (Owner)**, for the property located at **27 Shaw Road** requesting Preliminary and Final Subdivision approval.

City Council Representative Moreau moved to determine that the application is complete according to the Subdivision Regulations and to accept the application for consideration, seconded by Vice Chairman Clark. The motion passed unanimously.

SITE PLAN REVIEW

- A. **REQUEST TO POSTPONE** The request of **Monarch Village, LLC (Applicant)**, on behalf of **Neveesha Hospitality, LLC (Owner)**, for property located at **3548 Lafayette Road** requesting Site plan approval. **REQUEST TO POSTPONE**

This request was postponed to the February Planning Board Meeting.

- B. The request of **Sagamore Corner LLC, (Owner and Applicant)**, for the property located at **960 Sagamore Avenue** requesting Site Plan Approval.

City Council Representative Moreau moved to determine that the application is complete according to the Site Plan Review Regulations and to accept the application for consideration, seconded by City Manager Conard. The motion passed unanimously.

IV. PUBLIC HEARINGS -- OLD BUSINESS

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

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

- A. **REQUEST TO POSTPONE** Request of **Ricci Construction Company Inc., (Owner)** and **Green & Company Building & Development Corp., (Applicant)** for property located at **3400 Lafayette Rd** requesting a wetland Conditional Use Permit under section 10.1017 to construct 50 town homes on an undeveloped lot. The (Applicant) is proposing five areas of wetland impact for a total of 21,350 square feet of permanent impact and three areas of temporary impact for a total of 2,350 square feet. Said property is shown on Assessor Map 297 Lot 11 and lies within the Gateway Neighborhood Mixed Use Corridor (G1) District and the Natural Resource Protection (NRP) District. **REQUEST TO POSTPONE (LU-21-98)**

DISCUSSION AND DECISION OF THE BOARD

This request was postponed to the February Planning Board Meeting.

- B. **REQUEST TO POSTPONE** Request of **Ricci Construction Company Inc., (Owner)** and **Green & Company Building & Development Corp., (Applicant)** for property located at **3400 Lafayette Rd** requesting Conditional Use Permit for a Development Site in accordance with Section 10.5B40 of the Zoning Ordinance and Site Plan Review approval for construction of a 50-unit multi-family residential development that includes community space and related landscaping, drainage, paving, utilities and other site improvements. Said property is shown on Assessor Map 297 Lot 11 and lies within the Gateway Neighborhood Mixed Use Corridor (G1) District and the Natural Resource Protection (NRP) District. **REQUEST TO POSTPONE (LU-21-98)**

DISCUSSION AND DECISION OF THE BOARD

This request was postponed to the February Planning Board Meeting.

- C. The request of **Gregory J. Morneault and Amanda B. Morneault (Owners)** and **Darrell Moreau, (Applicant)** for property located at **137 Northwest Street** requesting a Wetland Conditional Use Permit under Section 10. 1017 of the Zoning Ordinance to impact 5,062 square feet of wetland buffer and 45 square feet of tidal wetland. The proposed new home and existing turnaround is partially within the 100' tidal buffer zone of the North Mill Pond. In addition to the new home the applicant is proposing to remove an existing gravel turnaround and install a new paved parking apron for City vehicles to turn around. This new turnaround and the City pump station are all within a new easement. In addition, there is a plan to upgrade the stormwater outfall to protect against erosion. Said property is shown on Assessor Map 122 Lot 2 and lies within the General Residence A (GRA) District and Historic District. (LU-20-222)

SPEAKING TO THE APPLICATION

John Chagnon from Ambit Engineering and Attorney Tim Phoenix spoke to the application. Mr. Chagnon commented that they appeared at the December meeting, but they would review the plan set because the Board had new members. This is a long skinny lot that involves a subdivision. The existing house is on the west end, and that will remain. The lot provided an easement when the Bypass bridge was reconstructed for a water main connection. The lot on the east is predominantly vacant except for a city sewer pump station and gravel turnaround. This plan will create an easement for that pump station and the turnaround. The turnaround will be a different configuration with this plan. This site is adjacent to the North Mill Pond. The lot slopes from west to east. Currently there is a catch basin pipe and outfall that discharges directly to the North Mill Pond. As part of the subdivision application, the applicant wanted to show a potential development that could go on the subdivided lot. It will be a single-family residence. The existing gravel turnaround will be removed, and it will be replaced by a paved turnaround and buffer plantings. This application went to the BOA for a number of variances. The lot width and placement of the house was approved. The plan includes a silt fence and silt sock during construction. The house will connect to existing City utilities. Mr. Chagnon spoke to the CUP application. The subdivision approval was granted at the November meeting. At that time the Planning Board had some concerns, questions, and suggestions for the CUP application. As a result, they have made some revisions. They have reduced impact by moving the garage to the west side of the house. The previous plan had 1,600 sf of impact; this plan has 900 sf of impact. The house was shifted to the west as well. The garage doors were turned to face Northwest St., which reduced the amount of pavement needed for the driveway. The applicant agreed to reduce the width of the building as well. Mr. Chagnon reviewed the Wetland CUP criteria and discussed how the application complied with it.

1. The first is that the land is reasonably suited to the use, activity or alteration.
 - a. Mr. Chagnon noted that this was a single-family residence in a residential zone. The street has the required utilities and the plan shows the placement and grading of the proposed house will work with land.
2. The second is that there is no alternative location outside the wetland buffer that is feasible and reasonable for the proposed use, activity or alteration.
 - a. Mr. Chagnon noted that the lot narrowed toward the west. The structure is as far west as possible given the setback relief that was granted by the ZBA. The garage is as small as possible. The majority of the structure is located outside of the wetland buffer. There is no other location that this could move to be further outside the buffer.
3. The third is that there will be no adverse impact on the wetland functional values of the site or surrounding properties.
 - a. Mr. Chagnon noted that the plan would remove 2,000 sf of existing gravel from the wetland buffer. It will be replaced with buffer plantings and soil. This proposal will improve the functions and values of the pond. Additionally, at the applicant's expense, they are proposing to improve the outfall that is currently eroding.
4. The fourth is that the alteration of the natural vegetative state or managed woodland will occur only to the extent necessary to achieve construction goals.
 - a. Mr. Chagnon noted that the area was being altered to go back to vegetation. There will be limited grading. The house is designed to fit the topography. There will be a limited amount of vegetation removed. They are only removing what is necessary to place house on the site.
5. The fifth is that the proposal is the alternative with the least adverse impact to areas and environments under the jurisdiction of this Section.
 - a. Mr. Chagnon responded that the alteration is an improvement to the buffer. There is no impact to the resource. It is just the buffer. The Planning Board is allowed to approve impacts to the buffer as part of a CUP application. It is a balancing act between applicant's proposal and what the Board can allow without impacting the resource. The gravel area will be restored to natural vegetated state which will provide filtration to runoff. The house is placed behind a structure that is closer to the resource. Another structure that is closer to the resource was recently approved to do a renovation. There will not be any impact to the resource, and it is the least impacting alternative.
6. The sixth is that any area within the vegetated buffer strip will be returned to a natural state to the extent feasible.
 - a. Mr. Chagnon noted that this proposal was restoring 2,000 sf of a wetland buffer. They are asking for 978 sf of permanent impact. This project meets the criteria.

Mr. Begala questioned if this property was in the flood hazard zone. Mr. Chagnon pointed out the flood hazard line on the plan. The proposed house is outside the flood hazard line and is 2 feet above the required elevation. Ms. Begala commented that a smaller house could reduce the impact to the buffer. Mr. Chagnon responded that the criteria talks about no location outside of the buffer that is feasible or reasonable. This is a reasonably sized structure. The size has

already been reduced a number of times through this process. Ms. Begala questioned what the square footage of the house was. Mr. Chagnon responded that the footprint was 1,491 sf. Ms. Begala noted that it looked bigger than house on the North Mill Pond side of the street. Mr. Chagnon responded that they are very similar in size. The house along the pond now has a garage structure as well.

City Council Representative Moreau questioned if they would be digging a basement for this. Mr. Chagnon responded that it would have a crawl space.

Chairman Chellman questioned if they got any new variances for the setbacks since coming here. Mr. Chagnon responded they did not. They were moving forward with variances they have already received. Chairman Chellman questioned if they would need new variances if they moved the same structure more west. Mr. Chagnon confirmed that was correct.

Mr. Phoenix commented that they don't think it's necessary or reasonable to move the house and get new variances. They are not particularly easy to get. They were approved already. The Board approved the subdivision, which suggests that they can build on the lot. The proposal includes over 50% reduction of impervious surface and the reestablishment of buffer plantings. They will be building the truck turnaround for the City and repairing the outfall. They are asking the Board to review the application on balance. By the time they hit the property line a small part of the house would still be in the buffer, and the owner would not be able to walk around the whole house on their own property. No one has said this proposal is harmful to the resource. The Board needs to look at this in the context of the surrounding area. This is a traveled public street with houses closer to the water and docks in the pond. They have met the criteria to the extent that is reasonable. The Staff Memo says that the plans as presented reflect significant changes from the November plan. This was originally intended to be a duplex. That was not received well, so it was amended to be a 1,900-sf single family home. Then it was reduced to 1,700 sf and now it is under 1,500 sf. The house was also moved 18 feet to the west and the width was reduced.

Vice Chairman Clark commented that they brought this proposal to the Conservation Commission in November and questioned if they had any concerns with those stipulations. Mr. Chagnon responded that the plans were revised to accommodate the stipulations. The buffer plantings were originally near the turnaround, but they were moved to accommodate snow plowing. They looked at putting in porous pavement, but it is too close to the pond for the water to infiltrate. They would have to put in an underdrain. They will add filtration to help deal with surface runoff. It will improve the situation. Mr. Clark questioned if they would follow NOFA lawn management practices as well. Mr. Chagnon confirmed it was already included in the plan.

PUBLIC HEARING

Kendra Ford 30 Pine St. questioned if they should be building so close to tidal water knowing that sea levels are rising.

Mr. Chagnon commented that the City has done a good job recognizing sea level rise and adopting an ordinance to extend the flood hazard requirements. This proposal is out of that zone, but also meets the grade requirements.

Chairman Chellman 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

Vice Chairman Clark moved to grant the request as presented, seconded by City Council Representative Moreau.

Vice Chairman Clark commented that this application has been to several Boards and presented to some of them multiple times. They have made changes that have improved the plan. The version they presented to the Conservation Commission did not pass. When it came to the Planning Board, they had a good discussion about moving more out of the buffer. The applicant has done that and went through the criteria. Some of it is in the buffer, but the buffer is currently disturbed and has not treatment. This plan is an overall improvement to the pond and improvement to the storm water coming off the site.

City Council Representative Moreau questioned if this proposal addressed some of the outstanding concerns the Conservation Commission had at their meeting. Mr. Britz responded that they have addressed some of the concerns including the buffer plantings. City Council Representative Moreau questioned if they were allowed in to restrict them from coming back to ask for any more paver areas or structure in the buffer. Mr. Britz responded that they have a limited exemption for expanding in the buffer that is tracked over time.

City Council Representative Moreau requested to add a stipulation stating that there could be no further impact for this specific lot in the buffer. Vice Chairman Clark accepted the amendment.

The motion passed by an 8-0-1 vote. Mr. Hewitt abstained.

D. REQUEST TO POSTPONE INDEFINITELY The request of **ADL 325 Little Harbor road Trust (Owner)**, for the property located at **325 Little Harbor Road** requesting a Wetland Conditional Use Permit under section 10.1017. The applicant is proposing 81,865 square feet of disturbance in the tidal wetland buffer the disturbance includes replacement of an existing home with a new home with a footprint of 3,382 square feet, construction of a new garage 1,300 square feet, renovation of an existing guest cottage 1,217 square feet, construction of a pool cabana 368 square feet and replacement of an existing shed 384 square feet along with other impacts/improvements including utility connections, playground, drainage improvement and extensive landscape improvements. Said property is shown on Assessor Map 205 Lot 2 and is located in the Rural (R) and Single Residence A (SRA) Districts. **REQUEST TO POSTPONE INDEFINITELY (LU-21-189)**

DISCUSSION AND DECISION OF THE BOARD

This was postponed to the February Planning Board Meeting.

V. PUBLIC HEARINGS – NEW BUSINESS

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

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

- A. The request of **Austin Repair & Renovation LLC, (Owner)**, for the property located at **27 Shaw Road** requesting Preliminary and Final Subdivision approval to subdivide one existing lot with 57,354 square feet of lot area and 230 feet of street frontage on Shaw Road and 127 feet of street frontage on Walker Bungalow Road into 2 lots as follows: Proposed Lot 1 with 34,205 square feet of lot area and 230 feet of street frontage on Shaw Road; Proposed Lot 2 with 23,149 square feet of lot area and 127 feet of street frontage on Walker Bungalow Road. Said property is shown on Assessor Map 223 Lot 18 and is located in the Single Residence B (SRB) District. (LU-21-203)

SPEAKING TO THE APPLICATION

Joe Coranati from Jones and Beach Engineers spoke to the application. The proposal is to subdivide one frontage lot off Walker Bungalow Rd. The existing house would stay on a conforming lot. The new lot would have adequate frontage and lot area. The new drive would be off Walker Bungalow Rd. The area is proposed to have City sewer sometime in the near future. They have requested a waiver to put in a holding tank until that sewer is put in.

Vice Chairman Clark requested more details on the 6-inch PVC pipe at the end of Cliff Rd. and questioned if they would need a flowage easement. Mr. Coranati responded that they thought it was an under drain of some sort.

Mr. Britz commented that a member of the public called in about that pipe today. Their statement was that the pipe was an out flow of a stream. Under heavy rain events it discharges onto this property. The pipe crosses under one property completely underground and is daylighted two properties up.

City Council Representative Moreau requested more detail on the storage tank. Mr. Coranati responded that it would be a 2,500-gallon holding tank that will be put in the ground. It has alarms for when it starts to reach capacity and it will need to be pumped out. It is not uncommon to use these in areas with an upcoming sewer. It will take a while for the house to be built and occupied. They need state approval for the holding tank. It will be installed and operated by the owner. It will not have a leach field.

Ms. Begala noted that 40% open space was required in the SRB zone and questioned if the new lot would have that. Mr. Coranati confirmed that it would. They can add that calculation to the plan.

Mr. Pezzullo commented that the applicants will need DES approval for a holding tank prior to the building permit. The plan should include a rain garden sizing and detail. Typically, a rain garden would have an overflow structure that connects to a catch basin. Mr. Coranati responded that there was a catch basin at the edge of the rain garden. The rain garden is 6 inches lower than the catch basin. Mr. Pezzullo commented that they should add an overflow. Mr. Coranati confirmed that they would.

Mr. Chellman questioned if this would be a 3-bed single family residence. Mr. Coranati confirmed that was correct. Mr. Chellman questioned if it would be pumped every week. Mr. Coranati responded that the calculation accounts for 150 gallons per day per bedroom. The reality of that flow is closer to 70 gallons per day per bedroom. If not all of the bedrooms are full, then it would be even less. Mr. Chellman questioned if they have done a holding tank in the City before. Mr. Coranati responded that they have not in Portsmouth. Mr. Chellman questioned if there was a staff approval process. Mr. Britz responded that it was a State approval. Mr. Pezzullo added that the future sewer would weigh into the decision.

PUBLIC HEARING

Sheraton Lloyd of 45 Cliff Rd. commented that she was the one who called about the PVC pipe. The pipe is at the top left corner where Cliff Rd. is. That is the open-air terminus for what was originally a complete stream system. It is underground on the abutting property and Ms. Lloyd's property has the original stream through her back yard. Beyond that there is more piping. It is not connected to the pond at Walker Bungalow Rd. When there are heavy rains the stream ends up blasting out of the pipe 3-4 feet. It floods the back of that yard. It is a continuous stream. It is always wet and flowing. They should evaluate if this is wetland or not. It is a wet neighborhood, and the area is delicate.

Second time speakers

Sheraton Lloyd of 45 Cliff Rd. commented that the Planning Board should stipulate that at no point in time can that pipe be blocked or plugged. They cannot impact the flow of that stream.

Mr. Coranati commented that Gove Environmental Services walked the property and verified there were no areas on the property that qualified as wetlands. There is a note on the plan that says there were no wetlands observed on the premises.

Chairman Chellman 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

Vice Chairman Clark moved to grant the waiver request for Section 6.11 of the Subdivision Regulations, seconded by City Council Representative Moreau.

Vice Chairman Clark commented that a holding tank was not ideal, however, in this instance there is a planned future sewer connection. The holding tank will also go through DES review.

The motion passed unanimously.

City Council Representative Moreau commented that there should be a stipulation to determine the ownership of the pipe and ensure the drainage continues to work. Chairman Chellman questioned if this had a prescriptive easement. City Attorney Sullivan responded that he did not know. City Council Representative Moreau questioned if adding a stipulation to determine what easements were needed covered that enough. City Attorney confirmed it was.

Mr. Pezzullo commented that they should include a stipulation about rain garden maintenance responsibility.

Vice Chairman Clark moved to **grant** the request, seconded by City Council Representative Moreau with the following stipulations:

Conditions Precedent:

- a. *Lot numbers as determined by the Assessor shall be added to the final plat.*
- b. *Property monuments shall be set as required by the Department of Public Works prior to the filing of the plat.*
- c. *GIS data shall be provided to the Department of Public Works in the form as required by the City.*
- d. *The final plat and all easement deeds shall be recorded concurrently at the Registry of Deeds.*
- e. *The applicant can demonstrate the availability of sewer or approved onsite septic or septic holding tank approved by NHDES prior to Building Permit issuance.*
- f. *All lending parties have provided release and approval of the subdivision.*
- g. *Add design details for rain garden and provide a riser overflow structure for rain garden.*
- h. *Owner shall provide for maintenance of rain garden and add to the deed for perpetuity by way of notation on the plan.*
- i. *Plans shall show calculation of 40% open space on existing and proposed lots.*
- j. *Applicant shall work with the City to determine ownership of pipe and ensure flow is not restricted, and resolve any easement rights.*
- k. *Plans must be stamped with wetland determination.*

The motion passed unanimously.

- B. REQUEST TO POSTPONE** The request of **Monarch Village, LLC (Applicant)**, on behalf of **Neveesha Hospitality, LLC (Owner)**, for property located at **3548 Lafayette Road** requesting Site Plan Review and a Conditional Use Permit as permitted under 10.5B41.10 of the Zoning Ordinance to allow for the demolition of 6 structures; the redevelopment of 6 existing structures to create 6 units in building 8, 15 units in building 2, 5 units in building 4, 2 units in building 5, 9 units in building 7; the construction of 4 new structures to create 12 units in building 3 with a 4,303 square foot footprint, 24 units in building 6 with a 7,048 square foot footprint, a 250 square foot storage structure and an 825 square foot storage structure; creating a total of seventy-five (75) residential units with 123 parking spaces where 113 spaces are required. Said property is shown on Assessor Map 297 Lot 6 and lies within the Gateway Corridor (G1) District. **REQUEST TO POSTPONE (LU-21-90)**

DISCUSSION AND DECISION OF THE BOARD

This application was postponed the February Planning Board Meeting.

- C.** The request of **Sagamore Corner LLC, (Owner and Applicant)**, for the property located at **960 Sagamore Avenue** requesting Site Plan Approval to demolish the existing mixed use structure and construct a 6-unit residential structure totaling 21,066 square feet of gross floor area, 21 parking spaces as well as associated utilities, lighting, landscaping, and site improvements. Said property is shown on Assessor Map 201 Lot 2 and is located in the Mixed Residential Business (MRB) District. (LU-21-204)

City Manager Conard moved to discuss New Business items C and D together and vote separately, seconded by City Council Representative Moreau. The motion passed unanimously.

SPEAKING TO THE APPLICATION

Attorney Francis (FX) Bruton, applicant Eric Cates, Eric Weinrieb and Corey Belden from Altus Engineering, and Robbi Woodburn from Woodburn & Company spoke to the application. Mr. Bruton commented that the project was a renovation of the Golden Egg. The Golden Egg was close to Sagamore Ave. Patrons often parked in the right of way while visiting it. The building is in disrepair and this plan dresses up the back side of the property, which has been a concern to neighbors. The lot contains a significant amount of impervious surface. It also lacks drainage mitigation features. There is a dumpster and debris in the back of the lot. The lot is encumbered by the 100-foot wetland buffer. There is a small portion of wetlands in the rear lot. That pushes everything forward. The plan is to build a 6-unit building. The first floor will have enclosed heated parking. The driveway will go out to Sagamore Grove. The project has been through a lot of review by the City. It has been to TAC, the Conservation Commission, and has had Planning Staff discussions. As a result, they came up with a plan that will take away 750 sf of existing impervious surface in the buffer. That will leave 0 sf of impervious in the buffer. The remaining CUP is to construct drainage and allow 1,100 sf of temporary disturbance in the buffer. There will be a 10 by 10 pervious patio in the buffer. The original proposal had 8 units,

but it was reduced to 6 units after abutter input. This proposal has unanimous support from the abutters. They have worked with City Staff and Boards to come up with plan that they will appreciate and approve. All conditions of approval set forth by staff are acceptable.

Mr. Weinrieb commented that this was a tired site, and the back of the house is deteriorated. The gravel parking lot is in the buffer. The front pavement blends with the road and right of way. This proposal is just for the Golden Egg site. The proposal is to eliminate parking in front and put in a new 6 unit building with direct access off Sagamore. There will be basement parking for unit owners and 5 visitor parking outside. There will be a handicap inside and outside as well. There will be permeable pavement for the access way and parking spaces. The ramp for the garage and the right of way for surface parking will be impervious. Currently the site is highly impervious. This proposal will be enhancing stormwater management in every aspect. There will be permeable porous pavement and storm water will get treatment on the area adjacent to the buffer. The pavement in the right of way will be removed and vegetated. The site between the building and right of way will have a sub-surface storm water treatment system and it will discharge into a catch basin. The site has 25,000 sf of impervious surface. There will be a reduction of 8,400 sf with this plan. The proposed water service for domestic and fire will come off Sagamore Ave. A holding tank will be installed as a temporary measure until the sewer comes forward. The area is not part of the base bid for sewer, but it's an add alternate. Their understanding is that the City can decide on doing it. It is part of the Consent Decree meaning they will be on sewer at some point. They don't expect to be online with the project until the summer of 2023. The hope is that as they move forward, they will know if there is a need for the holding tank or if they can connect to the sewer. The holding tank will only be installed if needed. There is a robust planting plan including wetland buffer enhancements and street scape planting. There is 400 sf of wetland on the site and 13,650 sf of wetland and buffer on the parcel. There is already impervious disturbed area in the buffer. Post construction there will be 0 sf in the buffer. They will only be grading and adding a 10 by 10 permeable patio grilling area in the buffer. They are not allowed to have grills on a deck by code, so they are putting in the patio for that. Mr. Weinrieb reviewed the Wetland CUP criteria and discussed how the application complied with it.

1. The first is that the land is reasonably suited to the use, activity or alteration.
 - a. Mr. Weinrieb responded that there was no alternative. They are going to make the site better and enhance the buffer.
2. The second is that there is no alternative location outside the wetland buffer that is feasible and reasonable for the proposed use, activity or alteration.
 - a. Mr. Weinrieb responded that the gravel area provides no buffer or storm water treatment. This plan will be enhancing the site and providing treatment.
3. The third is that there will be no adverse impact on the wetland functional values of the site or surrounding properties.
 - a. Mr. Weinrieb responded that they were not impacting any natural area because it is all disturbed.
4. The fourth is that the alteration of the natural vegetative state or managed woodland will occur only to the extent necessary to achieve construction goals.
 - a. Mr. Weinrieb responded that this was the least impacting. The plan was removing impervious and adding buffer and storm water treatment.

5. The fifth is that the proposal is the alternative with the least adverse impact to areas and environments under the jurisdiction of this Section.
 - a. Mr. Weinrieb responded that they will return it to a natural state and create a significant natural buffer.
6. The sixth is that any area within the vegetated buffer strip will be returned to a natural state to the extent feasible.
 - a. Mr. Weinrieb responded that this was a win, win for the City. They are improving storm water management and the buffer. Right now, there is a failed septic on the site that will be taken care of. There will not be any cars backing directly into the street and there will be less vehicles on the busy street.

Mr. Mahana questioned how they would handle the existing septic tank and grease trap. Mr. Weinrieb responded that all of that infrastructure would be removed. The septic is a chambered system under the road. That will be pumped and removed.

Vice Chairman Clark commented that the electric vehicle charge outlet in the basement was good and questioned if an AOT permit was required for the site. Mr. Weinrieb responded that it was not. Vice Chairman Clark appreciated the additional 15% rainfall used in the calculations, however, it looked like they used the 48-hour rain data. Mr. Belden responded that it was their intent to use the 24 hour. They may have highlighted the wrong column, but the correct numbers should be in the calculation. Mr. Clark questioned if they could call out slow-release fertilizer on the site. Mr. Woodburn confirmed that they could. Vice Chairman Clark commented that there was no sidewalk access or pedestrian crossing along Sagamore Ave. and questioned if that was discussed. Mr. Weinrieb responded that they debated it. There is a sidewalk on the west side of Sagamore Ave. TAC did not require it. There is not a lot of pedestrian crossing there because of the speeds on that road. A mid-block crossing is not recommended. There is a walkway coming out of the front of the building that is not intended as everyday use. It's a fire egress access. The walkway goes from the building out to the street. They did not think a sidewalk or crosswalk was necessary. Mr. Clark commented that the building to the north of Sagamore Grove also has a big curb cut. Mr. Weinrieb noted that the sidewalk ends at the bridge. There is a barricade at the entrance. Mr. Clark commented that it would be nice if people could safely walk downtown. Mr. Weinrieb responded that people can wait for the road to clear and cross to walk up the sidewalk on that side.

Ms. Begala questioned how the wetland was not going to undergo further degradation. Mr. Weinrieb responded that it will be enhanced because right now there are vehicles and infrastructure in the buffer. That will all be removed, and they will put in a vegetated buffer. The only permanent structure will be the permeable patio. There will be less water and contamination. Ms. Begala questioned if there would be degradation during construction. Mr. Weinrieb responded that they will use silt fences and silt socks during construction to prevent erosion. Ms. Begala questioned who would be responsible for the maintenance of the site. Mr. Weinrieb responded that the maintenance requirements will be in the condo documents and their responsibility. They would be reporting back to the City like most projects.

Vice Chairman Clark questioned if the Conservation Commission stipulations were included in the plan. Mr. Weinrieb confirmed they had been included.

Chairman Chellman questioned if there were any easements required for the plan. Mr. Weinrieb responded that he did not believe there were any easements required. Chairman Chellman requested that they explain how they were adhering to the building height stipulation by creating a building pad that doesn't conform to the existing grade. Mr. Weinrieb responded that the physical height is 26.5 feet high. The regulations state to use the average grade around the building based on 5 feet out at 5-foot intervals at finished grade. Chairman Chellman commented that they just wanted to ensure the Board members understood that. It will be much higher than the existing grade at its base. The building pad is where the building height is measured from.

PUBLIC HEARING

Sheraton Lloyd of 45 Cliff Rd. commented that there should be a traffic evaluation for this project to evaluate any impact on Sagamore Grove. It's a tiny street and there may be some congestion with that number of cars coming out of the new complex. Ms. Lloyd commented that they should put in a crosswalk to the sidewalk.

William Pingree of Sagamore Grove commented that everyone on the street was in favor of the project. There will be less traffic with the condos than the restaurant. This will be a big improvement for the whole area.

Chairman Chellman 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

Vice Chairman Clark commented that it was a good project and requested the Board's input on pedestrian access. It would be difficult to do any sidewalk on the side of the proposed development. People will get down to Sagamore Grove and then want to use that crosswalk. They should stipulate that there should be a crosswalk at that walkway.

City Council Moreau commented that they should stipulate that the application works with the Planning Department and DPW to look at the feasibility of a crosswalk at the end of Sagamore Grove. Vice Chairman Clark agreed and noted that the infrastructure of the storm water in that corner may be impacted.

City Manager Conard commented that they would work with the State on an appropriate solution. Chairman Chellman commented that putting in a crosswalk across a State highway was not a small matter.

Mr. Hewitt commented that the State highway stops at the intersection of Route 1A and Route 1B. That section of the road is City maintained.

Vice Chairman Clark moved to **grant** the request, seconded by City Council Representative Moreau with the following stipulations:

Conditions Precedent

- 2.1 The site plan and any easement plans and deeds shall be recorded at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.
- 2.2 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.
- 2.3 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
- 2.4 The Applicant or its engineer shall submit a copy of a completed Land Use Development Tracking Form using the Pollutant Tracking and Accounting Program (PTAP) online portal currently managed by the UNH Stormwater Center or similar form approved by the City.
- 2.5 The applicant can demonstrate the availability of sewer or onsite septic or septic holding tank approved by NHDES.
- 2.6 A fire service plan will be provided and approved by the Fire Department.
- 2.7 The applicant will work with the Planning Department to determine a finish stone for the retaining wall.
- 2.8 Add slow release fertilizer on entire site in landscape maintenance plan and on full plan set.

Conditions Subsequent:

- 2.9 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;
- 2.10 A stormwater inspection and maintenance report shall be completed annually and copies shall be submitted to the City's Planning and Public Works Departments.
- 2.11 Owner shall provide an access easement to the City for water valve access and leak detection. The easement shall be reviewed and approved by the Planning and Legal Departments prior to acceptance by the City Council.
- 2.12 At their own expense, the applicant must work with the Department of Public Works and the Planning Department to determine feasibility of a cross walk at the corner of Sagamore Avenue and Sagamore Grove Road.

The motion passed unanimously.

- D.** The request of **Sagamore LLC (Owner and Applicant)**, for the property located at **960 Sagamore Avenue** requesting a Wetland Conditional Use Permit approval according to section 10.1017.5 of the Zoning ordinance to impact 1,100 square feet of wetland buffer for grading and to remove 750 square feet of impervious surface in the wetland buffer and construct a new 100 square foot porous paver patio. Said property is shown on Assessor Map 201 Lot 2 and is located in the Mixed Residential Business (MRB) District (LU-21-204)

DISCUSSION AND DECISION OF THE BOARD

Vice Chairman Clark moved to the request as presented and advertised, seconded by City Council Representative Moreau.

Vice Chairman Clark commented that they were doing a good amount of impervious reduction on the site and were enhancing the buffer.

Chairman Chellman agreed and noted that the signage would be a good educational piece.

The motion passed unanimously.

- E.** Application of **ADL 325 Little Harbor Road Trust (Owner)**, for property located at **325 Little Harbor Road**, for Conditional Use Permit approval in accordance with Section 10.814 of the Zoning Ordinance for the conversion of an existing accessory structure (formerly caretaker's home) into a Detached Accessory Dwelling Unit with a gross floor area of 1,300 square feet of gross floor area. Said property is shown on Assessor Map 205 Lot 2 and lies within the Rural (R) and Single Residence A (SRA) districts. (LU-21-220)

SPEAKING TO THE APPLICATION

Corey Colwell spoke to the application. The proposal is to convert an existing accessory structure into a detached accessory dwelling unit (DADU). It was formally the caretaker's house. The site is 12 acres in size and in the rural zone. The site contains a residential home, carriage house, barn, horse shelter, and the caretaker's home. All of the structures are on the eastern half of the island. The western half is virtually untouched. The caretaker home is 2,400 sf and in a state of disrepair. The current owners bought the property in 2015. It had sat vacant since the early 1990s. They were told by local experts that the caretaker's home was built in the early 1800s. Originally it was slated for demolition, however, because it has historical significance they would like to renovate it into a DADU. The application proposes to remove the 1 story appendages and restore the main section. That reduces the area to 1300 sf. It exceeds the maximum allowed 1,000 sf but dimensional modifications can be issued by the Board. Reducing the size would compromise the integrity of the house and require demolition of the historical building. The island is over 12 acres in size and post construction there will be 94% open space. There will be a building coverage of 2.6%. The DADU complies with the standards

of zoning regulations. The principle and dwelling will be owned by the same owner and the owner will occupy the principle dwelling. They are currently rebuilding the principle dwelling unit and will be back in front of Board for that at a later date. Neither unit will be used for any business. They are currently working with the City to bring sewer to this island. The DADU and house are currently connected to an existing functional septic. The future application will show a sewer connection. If that does not happen, then they can continue to use the septic. The DADU complies with the minimum lot area for the district. It will contain 2 beds but will be over the 1,000 sf limit. The DADU will be clearly smaller in height and appearance to the principle dwelling. This is on an island, so the frontage regulation does not really comply. The DADU architecture is consistent with the principle dwelling. It complies with all the ordinance requirements. The Planning Board granted a CUP for this DADU in June 2019. It was extended by the Board in June 2021. There was a delay in construction caused by the death of the contractor. They have hired a new builder and revised some of the architecture. The only difference between the original approval and now is that in 2019 they were proposing to keep the whole building. This proposal is to only keep 1300 sf.

Ms. Begala questioned if the septic dated back to the 1800s. Mr. Colwell responded that the septic was installed in the late 1990s.

Mr. Pezzullo questioned if the DADU was served by the current septic. Mr. Colwell responded that the plan would be connect the DADU to the new sewer. It is currently connected to the septic and can remain that way. Mr. Pezzullo questioned if they would live there before the sewer connection was established. Mr. Colwell responded that they probably would not.

Vice Chairman Clark commented that the Board had a lot of heartburn over the size of the DADU in the original approval. They were led to believe that the size was necessary because of the historic condition. Vice Chairman Clark questioned if there were additional surveys done to determine it could be reduced. Mr. Colwell responded that that had a timber preservation company assess the structure. He determined that only the main part of the structure was timber frame. The thought is that the main structure was built first and the one story appendages were added later.

Chairman Chellman questioned if they planned to use the septic while doing the big house plan. Chairman Chellman questioned if this approval depended on the sewer connection or not. Mr. Colwell responded that the plan was to do construction as soon as possible. It could take many months. The hope is that by the time the construction was done the sewer would be in place. If it was not, then they could fall back of using the existing septic. Chairman Chellman questioned if it was an adequate septic. Mr. Colwell responded that it was adequate, but they don't like its proximity to river. The hope and intent are to not use it, but the State would allow it if necessary. Chairman Chellman clarified that they could use the existing septic for both the DADU and house if a sewer connection was never made. Mr. Colwell confirmed that was correct. Chairman Chellman questioned if the DADU could be used without the main house being occupied. City Council Representative Moreau responded that ownership was the main concern. The owner can rent one and live in the other. They just can't rent both.

PUBLIC HEARING

Chairman Chellman 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

Vice Chairman Clark moved to **grant** dimensional modification as permitted by section 10.814.53 of the zoning ordinance to all a maximum of 1,300 square feet of gross floor area where 1,000 is allowed, seconded by City Council Representative Moreau.

Vice Chairman Clark commented that this proposal was better than what was here in 2019. Historically, this Board has done everything to try to keep the footprint of the DADU. This one is slightly larger, but it is smaller than the original building. This is approvable because it is on a 12 acre island.

City Council Representative Moreau agreed it was approvable because of the uniqueness of the property.

Chairman Chellman agreed that because it was an existing building on an island it worked.

The motion passed by a 8-0-1 vote. Mr. Hewitt abstained.

Vice Chairman Clark moved to find the remainder of section 10.518.50 is **satisfied** by the application, seconded by City Council Representative Moreau.

The motion passed unanimously.

Clark moved to grant cup, seconded by CCM.

Vice Chairman Clark moved to **grant** the conditional use permit, seconded by City Council Representative Moreau with the following stipulations:

3.1 The applicant can demonstrate the availability of sewer or approved onsite septic or septic holding tank approved by NHDES prior to Building Permit issuance.

3.2 The applicant will add a note on the plans and record an affidavit at the registry that states this DADU will be the only accessory dwelling unit on the property.

Vice Chairman Clark commented that it met the criteria. They had a good discussion about the holding tank and sewer. Hopefully it all comes together.

City Council Representative Moreau commented that they need to have approval for a sewer or holding tank before they can get the building permit. There are protections in place.

Hewitt abstained. The motion passed by an 8-0-1 vote. Mr. Hewitt abstained.

VI. PRELIMINARY CONCEPTUAL CONSULTATION

- A. The request of **Bailey J. Frederick III (Owner)**, for the property located at **212, 214 & 216 Woodbury Avenue** requesting Preliminary Conceptual Consultation for a Lot Line Revision, demolition of one existing structure, and the construction of one eight-unit structure, two two-unit structures, and one three-unit structure. Said property is shown on Assessor Map 175 Lot 1; Map 175 Lot 2; Map 175 Lot 3 and lies in the General Residence A (GRA) District. (LUPD-22-3)

SPEAKING TO THE APPLICATION

Mike Garappey and Joe Coranati spoke to the application. Mr. Garappey commented that the location was the site was behind the Roundabout Diner on the corner of Woodbury Ave. and Boyd Rd. The proposal is to demo 212 Woodbury Ave. because it is in disrepair. 214 and 216 Woodbury Ave. will stay and remain as is. The only change to those buildings will be a slight lot modification. The plan is to reduce the lots in size and create an 8-unit condo development that is compliant with zoning and density. The proposal includes a small private road off Boyd Rd. They will close off the existing curb cut to 212 Woodbury Ave. The proposal is to build 3 single family units and 2 duplex units. That may change as this goes through this process.

Vice Chairman Clark commented that this was the opportunity for Board members to speak up because this applicant will come here again. This is the preliminary phase, so it is easier to make changes now than further down road. The storm water is in the back corner of the site, so the applicants should assess if they need any flowage easements from abutters. Mr. Garappey responded that they have not done test pits on the property, but they think there are good soils for drainage. Mr. Coranati commented that the property slopes down to that corner today. There is a little bit of a berm on the lot line. They will not be able to increase the flow going there but it be an outfall if need be. Vice Chairman Clark questioned if there was any way to line up the drive coming in with the drive across the street. That would help with traffic. Mr. Coranati responded that they could look at that. Vice Chairman Clark questioned if there was any way to continue the sidewalk to the end of Woodbury Ave. Mr. Garappey responded that this would more than likely include a sidewalk extension.

Mr. Mahana questioned where they would put the snow. Mr. Coranati responded that there was space. There will not be any development for the whole length of the road and there is an area next to the parking. There will be adequate space for snow. If it needs to be hauled, then the condo docs will have a note about that.

Mr. Samonas requested more details on the units and questioned if these would be for sale or for rent. Mr. Garappey responded that they haven't completed the architecture design work. They need to go to the Zoning Board first. They will probably be in the 2,000-sf range, have three bedrooms, and a 2-car garage. It will be similar to what exists on site today. They will be for sale. Mr. Samonas commented that it may make sense to look at more creative housing to include more density if possible.

City Council Representative Moreau commented that moving the entrance closer to Manor Drive would make more sense. It would look better to not clump them all in that one spot. The applicants should be in communication with the other abutters on Boyd Rd. to ensure they are aware of the plans. Abutter buy in is important. They will be adding more activity to the area, so they should assess how that will impact traffic.

Chairman Chellman commented that they may have a drain issue in the corner. Moving the buildings and driveway may help avoid a problem.

Mr. Garappey commented that the GIS mapping showed there was a wetland approximate to units 5 and 6. However they had a wetland scientist verify that there are no wetlands on the site.

Mr. Britz commented that the site review may require an independent review to verify that at a later date.

Chairman Chellman commented that they needed a motion to continue the meeting past 10 p.m. or continue it to another meeting. There are two agenda items that are time sensitive, so they should at least look at those tonight.

Vice Chairman Clark moved to continue the meeting past 10 p.m., seconded by City Council Moreau.

Mr. Harris commented that he would prefer to split the meeting.

Ms. Begala questioned if they would specify an end time if they chose to continue tonight. Chairman Chellman responded that they could make another motion later to adjourn. If the Board votes yes, then they are committing to getting through the end of the agenda.

The motion passed by a 7-2 vote. Mr. Hewitt and Mr. Harris opposed.

- B. The request of **635 Sagamore Development LLC (Owner)**, for the properties located at **635 and 695 Sagamore Avenue** requesting Preliminary Conceptual Consultation for the demolition of the existing commercial structure on Lot 19, the construction of five single-unit structures on Lot 19, and the construction of one single-unit structure on Lot 18. Said property is located on Assessor Map 222 Lot 18 and Map 222 Lot 19 and lie within the Single residence A (SRA) District. (LUPD-22-2)

SPEAKING TO THE APPLICATION

Mike Garappey and Joe Coranati spoke to the application the application. They are working with a neighbor to potentially merge two parcels and redevelop both. Historically the site has been an auto detailing shop and an existing garage behind the shop. This is located in the SRA zone and is a non-conforming use. The proposal is to demolish the existing buildings on 635 and maintain the existing single family on 695. They have located 6 new dwellings and a private

road. They will need a variance for density. This design is consistent with the development across the street which is SRB zoning. The property is adjacent to the Tide Watch Condo development. They are trying to have a similar density to that. It will be a short private road and all single-family homes.

Vice Chairman Clark commented that there was a 12-foot grade difference between the driveway and furthest back unit. This will make storm water treatment and sewer difficult. They should also consider how the units will appear to the abutter. Mr. Garappey responded that the design has them sitting up above and avoiding slopes down below. They looked at a preliminary sewer design and hope to do gravity fed. It may require some grinder pumps in the back units. The rear units would have a walk out type aspect to them. Vice Chairman Clark commented that the appearance to abutters will be important. Mr. Garappey responded that the site is all treed in the rear. It will not mask the view completely, but it will provide buffering.

City Council Representative Moreau commented that they should consider facing what looks like the front of the house toward Sagamore Avenue with a walkway to the sidewalk. They should put in as much a buffer as possible to provide a buffer from other condo units. They should take a hard look at drainage and runoff because of the grade change.

Ms. Begala commented that they should build 1-3 dwelling units per acre according to the ordinance and not seek density relief. Mr. Garappey responded that the site is an existing non-conforming site. In order to redevelop the site, they need more density. Today they would only be allowed to build one unit. There is not a lot of economic incentive to redevelop without relief. They are trying to be consistent with the surrounding neighborhood for density. There are only few homes along Sagamore Ave.

Mr. Pezzullo commented that the gravity sewer ended at the entrance of Tide Watch. Mr. Garappey commented that they have had communication with DPW. Mr. Coranati added that there is a sewer expansion happening for Shaw Rd. There are 2 manholes going in at the top of the hill. Mr. Pezzullo clarified that they were counting on future City sewer and questioned if they would use pumps. Mr. Coranati responded that the first couple could be gravity and the back units may require pumps.

VII. DESIGN REVIEW APPLICATION ACCEPTANCE

- A. The request of **Port Harbor Land LLC, (Owner)** for the property located at **2 Russell Street and along Russell Street and Deer Street** requesting Design Review for a mixed use project consisting of office, retail/commercial, and residential uses in one 4-story and two 5-story buildings. The site is located between, Russell Street, Deer Street, Maplewood Avenue and the Railroad Corridor. Said properties are located on Assessor Map 124 Lot 12, Assessor Map 118 Lot 28, Assessor Map 119 Lot 4, and Assessor Map 125 Lot 21 and lie within the Character District 5 (CD-5). (LUPD-22-1)

SPEAKING TO THE APPLICATION

Patrick Crimmins from Tighe and Bond commented that they were seeking a vote to get this scheduled to hold design review at the next public hearing.

DISCUSSION AND DECISION OF THE BOARD

City Council Representative Moreau moved to **accept** the application and scheduled a Design Review and public hearing for the February 17, 2022 Planning Board meeting, seconded by Vice Chairman Clark.

The motion passed unanimously.

VIII. PUBLIC HEARING - CITY COUNCIL REFERRALS

- A. Application of **Randi Collins (Owner)**, for the restoration of involuntarily merged lots at **77 Meredith Way** to their pre-merger status pursuant to NH RSA 674:39-aa. Said property is shown on Assessor Map 162 Lot 16 and lies within the General Residence A (GRA) district. (RIML-21-5)

DISCUSSION AND DECISION OF THE BOARD

This was postponed to the February Planning Board Meeting.

IX. OTHER BUSINESS

- A. Request of **London Bridge South Inc. (Owner)** for property located at **0 Falkland Way (address now known as 114 Saratoga Way)** for a 1-year extension of the Site Plan review approval for the demolition of an existing garage and shed and the construction of a new 4-unit residential building on merged lots with associated parking, stormwater management, lighting, utilities and landscaping as granted on January 21, 2020. (LU-20-164)

SPEAKING TO THE APPLICATION

Joel Lazadorian commented that they were seeking a one year extension. This was originally granted to Rowley Holdings and they purchased it in 2021. They are on week away from getting the bond.

DISCUSSION AND DECISION OF THE BOARD

City Council Representative Moreau moved to **grant** the 1-year extension, seconded by Vice Chairman Clark. The motion passed unanimously.

- B. **Woodbury Avenue Cooperative, Inc. (Owner)**, for the property located at **1338 Woodbury Avenue** for a 1-year extension of the Site Plan review approval for the demolition of two existing structures and replacement and reconfiguration of existing

mobile home units with associated grading, pavement, lighting, utilities, landscaping and other site improvements as granted on March 18, 2021. (LU-20-198)

DISCUSSION AND DECISION OF THE BOARD

City Council Representative Moreau moved to **grant** the 1-year extension, seconded by Mr. Harris.

City Council Representative Moreau commented that it was not required but was pretty standard to give a one-year extension. Beyond that they would need a good explanation.

The motion passed unanimously.

[Pursuant to court order, the City Attorney has advised this section of the record related to application of 31 Raynes Avenue, 203 Maplewood Avenue, and 1 Raynes Avenue has not been accepted into the official record of these minutes.]

- C. The rehearing request of **Duncan McCallum (Rehearing Applicant)**, for property located at **31 Raynes Avenue, 203 Maplewood Avenue, and 1 Raynes Avenue** for a Conditional Use Permit as permitted by Section 10.1112.62 of the Zoning Ordinance and according to the requirements of Section 10.1112.14 to allow 113 off-street parking spaces including 18 reserved spaces to be provided on-site and 25 spaces to be provided on a separate lot where a total of 138 are required and Site Plan Review approval for the demolition of three existing buildings and construction of the following: 1) a 5-story mixed use building with 66,676 gross floor area and 16,629 sq. ft. building footprint including 7,720 sq. ft. of commercial use on the ground story and 32 residential units on the upper stories; 2) a 5-story 124-room hotel with 65,980 gross floor area and 14,622 sq. ft. of building footprint; 3) 34,427 sq. ft. of community space as well as associated paving, lighting, utilities, landscaping and other site improvements. Said properties are shown on Assessor Map 123 Lot 14, Map 123 Lot 13, Map 123 Lot 12, Map 123 Lot 10 and lie within the Character District 4 (CD4) District, Downtown Overlay District (DOD), Historic District, and the North End Incentive Overlay District. (LU-21-54)

DISCUSSION AND DECISION OF THE BOARD

Chairman Chellman commented that the City Attorney was there, and they had memo from the City Planning Director. This has been discussed with the NH Municipal Association. There was a relatively similar case Nashua. The court has said the Board has the right to rehear within in a 30-day period. This is up for consideration.

City Attorney Sullivan commented that they did a substantial amount of work on these requests. The statements the Chairman just made were accurate. There is no law compelling the Board to rehear an application, but the Board can choose to do so. If the request for a rehearing is because of an error the Board has made, then it is probably better if the Board grants a rehearing and deals with the error. However, if no error is presented, then they have no reason to do it. The Board's decision to rehear

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should be based solely on the documents provided. If they vote to rehear, then it will be scheduled for another meeting. A rehearing would allow the interested party to speak and present evidence. Then the Board has the latitude to reconsider prior actions.

Mr. Harris to **grant** the rehearing request as presented, seconded by Ms. Begala.

Mr. Harris commented that it was important to evaluate these types of things to prevent further movement into the courts. It's worth evaluating in this case. Mr. Harris was not comfortable with the original vote and thought there was more to consider. It is better for the City to have a rehearing.

City Council Representative Moreau commented that she would be against rehearing it. This Board did a good job and looked at it multiple times at different stages. A lot of effort went into looking at it and changes were made. This was approved by a Board vote. There is no error the Board needs to correct.

Vice Chairman Clark agreed with City Council Representative Moreau and did not think the Board should be considering this request. There is already an avenue for those who wanted to appeal the Board's decision. Vice Chairman Clark was concerned that if they moved forward, then they could be getting rehearing's all the time. There is another avenue for people who disagree with the outcome. The Planning Board is doing their job and reviewing the projects as they should. They should not be considering this because it will set a precedent. There is no Statute to go by. There are already defined legal ways for people to appeal the Board's decision.

Ms. Begala agreed that the Planning Board needed to develop criteria for this, but did not think it limited them from deciding whether or not to have a hearing if they think there are legal consequences. Ms. Begala commented that they could divert a legal action by having a rehearing and would support having one.

Mr. Mahana commented that he was in favor of a rehearing because there were some valid points made in the documentation.

City Council Representative Moreau asked City Attorney Sullivan if the Board was putting themselves in any sort of liability for having a rehearing without proper rules and procedures in place. City Attorney Sullivan responded that there was no monetary liability. There is risk that the decision could be overturned. It is the recommendation of the Planning and Legal Department that Planning Board consider implementing rules and regulations on how the Board would like to handle rehearing requests in the future. The Board has latitude to make their own determination on what that would be.

Vice Chairman Clark commented that if this was something the Board wants to consider, then they need to develop procedures around it.

Chairman Chellman commented that the Board has a right to have a rehearing within 30 days. If the Board grants a rehearing, they are not saying there is a basis for overturning the decision. They are just granting to hear it again. It is a new review. City Attorney Sullivan commented that if the Planning Board wanted to follow the Zoning Board process, then they would look at the documentation in front of them and determine if that presented reason for a rehearing. If they chose to rehear it, then they would bring the matter back in front of the Board. It is not necessarily overruling the action. At the rehearing the Board can expect to hear arguments and maybe new evidence. The Board will make the decision after the arguments and evidence are presented. They can maintain their initial decision or change it.

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Ms. Begala commented that the timeframe was supposed to be within 30 days and questioned if the original decision was outside of that timeframe. City Council Representative Moreau responded that the decision was made on December 30, 2021, so it was within 30 days.

City Council Representative Moreau commented that this should go to the Zoning Board. There is a mechanism already in place for an appeal. It may look like the Planning Board doesn't know how to do their job if they accept a rehearing without rules and regulations.

Vice Chairman Clark commented that the Planning Board operates on guidelines that are clear on what can and cannot be done. Staff may not be able to provide any recommendations on this. It's unclear what the motion would be. Vice Chairman Clark commented that they should not have a rehearing without established rules and procedures.

Chairman Chellman commented that a CUP was a special exception for this Board, and it did not go to the Zoning Board. The State is behind on this because the CUP is a relatively new thing. The courts have made the decision to let the local boards have the first opportunity to consider just in case a mistake was made, or new information has been presented. It is more expeditious to have a rehearing than an appeal. The motion would be to grant a rehearing or not.

Vice Chairman Clark commented that it would be nice to have something concrete to go by. Chairman Chellman noted that this would not be setting a precedent. Every situation is different.

Ms. Begala agreed and noted that these two requests are very different. There are legality questions with this one and they should have a rehearing for it.

The motion passed by a 5-4 vote. Mr. Pezzullo, City Manager Conard, City Council Representative Moreau, and Vice Chairman Clark opposed.

- D. The rehearing request of **Duncan McCallum (Rehearing Applicant)**, for property located at **31 Raynes Avenue, 203 Maplewood Avenue, and 1 Raynes Avenue** requesting a Wetland Conditional Use Permit under section 10.1017 to construct two buildings 1) a 5 story mixed use commercial and residential building and 2) a five story hotel building with 124 rooms. The project has removed all of the impervious surface from the 25' tidal buffer, proposes 67 square feet of impervious surface in the 25-50' tidal buffer and 21,190 square feet of impervious in the 50-100' tidal buffer. Overall the project is able to demonstrate a reduction of 7,070 square feet of impervious surface in the tidal wetland buffer from the existing condition or a reduction of 10,107 square feet if the reserve parking is not constructed. Said properties are shown on Assessor Map 123 Lot 14, Map 123 Lot 13, Map 123 Lot 12, Map 123 Lot 10 and lie within the Character District 4 (CD4) District, Downtown Overlay District (DOD), Historic District, and the North End Incentive Overlay District. (LU-21-54)

DISCUSSION AND DECISION OF THE BOARD

Mr. Harris moved to **grant** the rehearing request as presented, seconded by Mr. Mahana.

The motion passed by a 5-4 vote. Mr. Pezzullo, City Manager Conard, City Council Representative Moreau, and Vice Chairman Clark opposed.

- E. The rehearing request of **Katy Sherman (Rehearing Applicant)**, for property located at **99 Bow Street**, requesting to allow the expansion of the existing deck to include expanded seating for the business as well as public access to the Piscataqua River. Said property is shown on Assessor Map 106 as Lot 54 and lies within the Character District 5 (CD5), Downtown Overlay, and Historic Districts. (LU-21-181)

DISCUSSION AND DECISION OF THE BOARD

City Council Representative Moreau moved to **deny** the request as presented, seconded by Vice Chairman Clark.

City Council Representative Moreau commented that this case was thoroughly looked at. A lot of the points that were brought up were mainly about the trash. They need to bring that up as a violation of the current approval and have Health Officer investigate. The applicants changed the deck and made it smaller. They do not need abutter approval, so the approval is legal.

Vice Chairman Clark agreed. The previous request was for a CUP parking and wetland. This request was just a rehearing request. There is no CUP on this one. This is where the confusion is coming from. The Board does not have any rules and procedures. There is no way for the BOA to review a CUP. This is where the rules and procedures would provide guidance. Vice Chairman Clark was struggling on how to move forward.

Chairman Chellman commented that they were affording the opportunity for this to be requested. It does not mean the Board needs to grant it. They can ask for a rehearing of anything this Board does, but it doesn't need to be reheard. The Board will vote based on the merits of what was submitted.

Ms. Begala commented that she would not grant a rehearing because this was not a legal issue. The Board should codify a process around this.

Mr. Harris commented that based on the information provided he agreed with Ms. Begala.

The motion passed unanimously.

X. ADJOURNMENT

City Council Representative Moreau moved to adjourn the meeting at 10:54 p.m., seconded by Vice Chairman Clark. The motion passed unanimously.

Respectfully submitted,

Becky Frey,
Secretary for the Planning Board