

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

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

**7:00 PM**

**December 30, 2021**

**MINUTES**

**MEMBERS PRESENT:** Peter Britz, Interim Planning Director; Dexter Legg, Chair; Elizabeth Moreau, Vice Chair; Karen Conard, City Manager; Peter Whelan, City Councilor; Ray Pezzullo, Assistant City Engineer; Colby Gamester; Corey Clark; Peter Harris; Rick Chellman; Polly Henkel, Alternate; Stefanie Casella, Planner 1

**ALSO PRESENT:**

**MEMBERS ABSENT:**  
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**~~I. PRESENTATIONS~~ *(Time: 6:00 pm)***

~~A. FY 2023-2028 Capital Improvement Plan~~

**~~II. APPROVAL OF MINUTES~~ *(Time: 7:00pm)***

~~A. Approval of the Planning Board minutes from the November 18, 2021 meeting.~~

**~~III. DETERMINATIONS OF COMPLETENESS~~**

**~~SITE PLAN REVIEW~~**

~~A. The request of **North Mill Pond Holdings LLC (Applicant), and One Raynes Ave LLC, 31 Raynes Ave LLC, and 203 Maplewood Ave LLC (Owners)** for property located at **31 Raynes Avenue, 203 Maplewood Avenue, and 1 Raynes Avenue** requesting Site Plan Review approval.~~

~~B. The request of **Martingale, LLC (Owner)**, for property located at **99 Bow Street**, requesting Site Plan Review approval.~~

~~C. The request of **Dagny Taggart, LLC (Owner)**, for property located at **93 Pleasant Street** requesting Site Plan Review approval.~~

~~D. The request of **Torrington Properties Inc. (Applicant)**, on behalf of **2422 Lafayette Road Associates, LLC (Owner)**, for property located at **2454 Lafayette Road** requesting Site Plan Review approval.~~

#### ~~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)**~~

~~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)**~~

~~C. **REQUEST TO POSTPONE** 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. **REQUEST TO POSTPONE (LU-20-222)**

**V. PUBLIC HEARINGS NEW BUSINESS**

**A. The request of North Mill Pond Holdings LLC (Applicant), and One Raynes Ave LLC, 31 Raynes Ave LLC, and 203 Maplewood Ave LLC (Owners) for property located at 31 Raynes Avenue, 203 Maplewood Avenue, and 1 Raynes Avenue requesting 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)**

**B. The request of North Mill Pond Holdings LLC (Applicant), and One Raynes Ave LLC, 31 Raynes Ave LLC, and 203 Maplewood Ave LLC (Owners) 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)**

- C. The request of **Martingale, LLC (Owner)**, for property located at **99 Bow Street**, requesting Site Plan Review Approval 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)

Chairman Legg commented that the Board received a letter from Duncan McCallum suggesting Mr. Pezzullo has been inappropriately elected to the Board and the letter asked the Board to dismiss him. There was a response letter from City Attorney Bob Sullivan stating that it was his opinion that Mr. Pezzullo remain active. The Board has no authority to take action on it. This is informational only.

### **SPEAKING TO THE APPLICATION**

John Chagnon from Ambit Engineering spoke to the application via Zoom. The project consists of 2 separate decks that will be attached to the east and west ends of the existing deck. The western deck expansion will provide general and ADA public access to the riverfront and inner harbor of the Piscataqua River. The eastern deck expansion will be for expanding the outdoor dining space of the Martingale Wharf Restaurant. The public wharf deck will display an educational sculpture. The plan set cover sheet shows the US Army Corps Engineers navigation channel. That channel is located 120 feet from the Martingale Wharf building. There have been some edits to the plans based on abutters' comments. Ultimately, it reduces impact because the eastern deck has been reduced. They had a preapplication mitigation meeting with NHDES that was attended by Fish and Game. This project is adjacent to a critical habitat for Atlantic sturgeon. Fish and Game had no concern regarding impact to the species as long as the construction was completed between November and March. That has been specified in the plan. The deck on the east end has been reduced, so it is no longer located within 20 feet of the abutting property. The revised plans went to the Conservation Commission and there were comments that the structure should be reduced. The deck was reduced by 540 sf on the east. The float expansion has been eliminated completely. There will be a handicap accessible public zone and private provide outdoor dining area. The expansion will provide a specific use which is in accordance with DES regulations. The deck will be a pile supported structure. The project will not have an impact on the functions and values of the adjacent tidal wetland. The structure will not contribute to additional storm water and will not have an impact on species in the area. It will not impede on tidal flow or hydrology. It will not impede migratory fish movement. These structures are common in that area. It will not impact the character of the neighborhood or the abutters. The site was granted an urban exemption by DES. The entire property is now exempted from the Shoreline Protection Act. There was some objection raised at the HDC that they were not transparent, but they disagree. Martingale Wharf appeared before the HDC in many meetings to review and there were public hearings. If there is a required change with the HDC approval, then the team will go back to get approval.

Richard Desjardins and Mark Gianniny from McHenry Architects spoke to the application. Mr. Desjardins commented that the eastern deck would be 890 sf and would extend the restaurant use. The western end of the deck would be extended by 344 sf. The owner is gifting an ADA

compliant public access deck. The deck has squared off edges to align with the existing dock. That was at the request of the HDC. In addition to the expansions the project will include 2 custom designed murals. Those will be going through the HDC and will be included when approved. There will be planter boxes and green screening to soften the space. It will help reduce the long vistas down the deck.

Mr. Chagnon commented that the applicant had no issues with the stipulations that were listed. The second stipulation in the memo is not needed, but the rest are agreeable.

Mr. Chellman requested that the applicant speak to the easement and how the public access would be outlined in the easement. Mr. Chagnon commented that the public access would be through the public entrance to Martingale Wharf and use the elevator. There is also a direct stairway off Bow St. to the left of the building that goes directly to the deck. The developer will be granting the City access in an easement to that area so citizens can use the deck. It will not be available 24/7. There will be periods of time when it is not available. That is consistent with other public easements that have been granted throughout the City.

Vice Chairman Moreau questioned if there would be signage at the street directing the public to the deck. Mr. Chagnon responded that they have not developed a sign package but that would be something the Board can stipulate.

Chairman Legg questioned how the public would access the deck if they did not want to go through the restaurant. Mr. Chagnon responded that they could use the stairs off Bow St. outside the building. Chairman Legg questioned if that was a public right of way now. Mr. Chagnon confirmed that was correct. Chairman Legg commented that it would be more inviting to have the public walk from the sidewalk in the open air to the deck rather than going through the restaurant. Mr. Desjardins commented that the ADA access was through the restaurant, but otherwise they could use the open stairway. Chairman Legg commented that he encouraged safe passage and clear signage that was approved by City Staff.

Mr. Chellman commented that there was concern raised about conventional pilings and questioned if there was an alternative to screwing in the pilings. Mr. Chagnon responded that at this point in time the team is recommending this style of pile. The method is used a lot up and down river, so it's suitable. Mr. Chellman questioned if there had been borings done to know if there was ledge. Mr. Chagnon responded that he was not sure. They were working with a marine engineer contractor and this is what they are recommending.

Vice Chairman Moreau questioned what the status of the DES application was. Mr. Chagnon responded that they requested more information and the applicants responded to that on 12/23/21. DES has 60 days to either issue a decision or request more information.

Mr. Clark commented that the Conservation Commission reviewed this application for a wetland permit review and questioned what that meant. Mr. Britz responded that the City's jurisdiction of the wetland permit is everywhere but the river. The river does not require a City CUP. There is a state wetland permit for tidal wetland and fresh water prime wetlands. This requires a state wetland permit. The Conservation Commission is an advisory committee to the state

application. They make a recommendation to the state. Mr. Clark clarified that their recommendation was going to the state, not the Planning Board. Mr. Britz confirmed that was correct.

Mr. Gamester requested more information on the trash situation that was noted in Attorney Sherman's letter. Mr. Chagnon responded that the trash is routinely collected, and the storage area is on the southeast corner of the property. It is screened from Bow St. It is emptied as many times as necessary. There may be a time when it's overwhelmed, but they are working hard to ensure the bins are not overflowing. The expansion of the seating area is not necessarily an expansion of customers. More people want to eat outside, and this expansion will allow for that. It should not be a large number of additional diners.

Owner John Ricci commented that the trash was not really part of the per view of the dock. They have an enclosure and manage the trash. They have never had the Board of Health complaint. They would be glad to address it if there are issues.

Mr. Chellman commented that the easement for the public access should not include the area to the right, to prevent it from becoming a hang out area before people get to the deck. Mr. Chagnon agreed. That's the hostess station area, so that makes sense. Mr. Desjardins commented that there will be a gate before the hostess station, so that will reenforce that it is a private area. Chairman Legg commented that the public deck should not become an overflow space for customers waiting for a table. Mr. Ricci responded that there will be a landscape barrier between the restaurant and public space. There will be a clear definition between public and private. However, if the deck is open to the public, then who would defines who the public is. They will try to manage it, but people may want to enjoy the view.

Vice Chairman Moreau commented that there needed to be an access easement to use the elevator.

## **PUBLIC HEARING**

Elizabeth Bratter of 159 McDonough St. commented that when the deck was expanded to its current size it was supposed to include a 400-sf public space, and that did not happen. Today they are proposing the same amount of public space. They are asking to expand the deck again. This public access come with a lot of strings. Ms. Bratter questioned if there would be an easement to allow the public access or if it would be just a massive super deck. This application does not show the actual dimensions of the current site. It is unclear on how big the deck is compared to what's there today. There is a large public access area off of Ceres St. The ADA access is not unique because people can go down on the Ceres St. side. The latest application is missing information. They should deny this application until all of the information is provided. If this is approved, then Portsmouth will just end up with a city of restaurants.

Attorney John Sherman of 111 Bow St. Unit 2 commented that there were a lot of unanswered questions in this submission. There were a lot of questions this Board asked that the applicants did not know the answer to. They are proposing to build an unprecedented sized deck over the

Piscataqua. One big open question is how DES will handle this. The Conservation Commission rejected this proposal twice. The applicants were told they could not wharf out into the Piscataqua because it would be in the federal navigable setback. The channel is separate than the navigation setback. In 2015 they were in front of the Conservation Commission and were denied. Now they are saying they will go back to the Conservation Commission again. Mr. Sherman was not aware of that. Their answer will not be different.

Katie Sherman of 111 Bow St. unit 2 commented that the application was not complete. They were asked if there was ledge, and they didn't know. The land use regulations specify the criteria that should be considered. The existing use causes abutters significant problems and expanding that will only make it worse. The expansion will not compliment or enhance 111 Bow St. It will cause the property to decline and one reason for that will be because of the unsightly outdoor storage. The trash is pushed up against the historic building. It is causing a rat problem. The grease trap is there too. There is light spillover from the existing deck, and it is year-round because they have fire pits. There is no space to access the water between the buildings if there is an emergency. The restaurant employees smoke in front of 111 Bow St. All of the units in 111 Bow St. do not agree with this expansion. At the HDC meetings it was noted that the public area now is a space for people waiting for their tables. The public can get to the water through Ceres St. At minimum the Board should do a site visit. This deck is not ADA accessible because the restaurant can open and close access at their discretion. There are several other public decks on Ceres St. already.

#### Second time speakers

Attorney John Sherman of 111 Bow St. the City just approved an expenditure to fix and upgrade the deck that overlooks the Piscataqua on 113 Bow St. it is double the size of this deck and will allow for public access and viewing opportunities. Patrons will be using the public area while waiting for their tables. That is not speculation. Jeremiah Johnson said that at the HDC meeting. They are presently required to have a public portion on the deck, and patrons use it as overflow waiting space. The applicants should know if there is ledge or not on the shoreline. 111 Bow St. is one of the oldest buildings. The Board should not allow them to drive piles into the shore without knowing what's there. That is unacceptable. The current screens for the trash are out of character with the Historic District. The Board should not allow more screens to be installed. It will take away views. The proposed screens are unsightly and out of character. The art on the screens will only be available to the people on the deck. The other side is blank metal. They are trying to mitigate that problem with plantings, but that is only a seasonal mitigation. The Planning Board needs to be considering the residences in the area. They need to ensure that the value of the abutting residences do not decrease. They have been talking about public ADA access since 2012 and if they were truly motivated to provide that, then they would have 10 years ago.

Katie Sherman of 111 Bow St. Unit 2 reiterated that the trash was a problem. John Ricci noted that the picture was taken on an overflow day but that's the standard. The trash issue has been ongoing. They have only just now separated it from the building by 2 inches.

Attorney John Sherman of 11 Bow St. Unit 2 commented that the trash pictures were from 2015 and were submitted to the Planning Board last time they went through this process.

John Chagnon from Ambit Engineering commented on the issues that were brought up. To say there are a lot of unanswered questions is not entirely true. The Planning Board gets to ask questions that can be answered throughout the process. The applicants come before the Planning Board before they have completed all the construction drawings to build a building. It does not make sense to make final plans before the site approval it acquired. Issues were raised about wharfing out in the previous application. There was an exhibit presented in the last round of applications that showed a wharf perpendicular to the shore wharfing out. That was used as an exhibit in the application to justify the expanded facility. It was stated in the application if they were to wharf perpendicular to the shore, then they would approach the channel and it would not be safe. The Harbor Master has reviewed this application and does not feel that there will be any impact to the navigation channel. This application will not be going back to the Conservation Commission. The project may go back for HDC approval because the deck has gotten smaller. The signage issue was raised and that will be addressed by the applicant. The final design for the pilings comes after the Planning Board approval. It will be part of the application for the building permit. There is public access already and that is not going to change. There are steps in the public access on Ceres St., so it is not ADA compliant. The screen that was proposed on the abutter's side was a mitigation measure and has since been taken out. The deck has been cut back so significant portion of the restaurant building will pick up noise and light before it spills to the abutter. The other side has a screen to separate between the two decks. It will offer privacy to the public portion.

John Ricci owner of Martingale Wharf commented that the elevator access was important because the grades on Ceres St. don't meet ADA requirements. The elevator is the only ADA access to the waterfront. They rebuilt the deck using vibratory piles. The abutting building was not impacted. If this is approved, they will get a marine engineer and investigate what type of piles should be installed. When deck that is there now was installed, they didn't have any complaints or issues from abutters.

Rick Becksted of 1395 Islington St. spoke as resident. Mr. Becksted expressed gratitude to the Chair and the other Planning Board members who will not be serving anymore. Their service has been greatly appreciated. Secondly, Mr. Chagnon claimed that questions can be answered after. Unanswered questions should not get an approval. Unanswered questions means that it's not complete. The Board should consider everyone's views. A direct abutter is opposed. If the Board approves this, then this will be a one and done approval.

Duncan MacCallum of 536 State St. was opposed to the project and agreed with the Shermans' and Ms. Bratter's comments. Mayor Becksted is correct. There are too many unanswered questions. Those should be answered before approval is granted.

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

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

Vice Chairman Moreau questioned how they ensure that what they approve is built in its entirety and fully finished. Mr. Britz responded that there's a bond in place to ensure all the site work is completed. Vice Chairman Moreau commented that there was a lot of talk about how the pilings can be driven in. Vice Chairman Moreau questioned if the pilings were part of the Planning Board's per view or DES. Mr. Britz responded that DES approves the water work. However, they still will have a building permit phase and that would include the piling construction.

Mr. Harris commented that there were still a lot of unknowns and unanswered questions about the base of the pilings and depth that they have to go down. It is deep water there. This should be evaluated beforehand. They should not approve this if there are unanswered questions.

Mr. Chellman commented that the easement needs to be defined from Bow St. down the stairs to the public deck. Chairman Legg commented that they can include that as a condition.

Mr. Gamester added they should clarify the ADA access would be through the elevator.

City Council Representative Whelan commented that DES has not provided approval yet, and the Conservation Commission did not recommend approval. They need DES approval to be able to do this project. The Planning Board should not approve this, until they have answers. This is a large deck that will be further out into one of the fastest tidal rivers in the U.S. There is a reason why these rules are in place. There are a lot of unanswered questions.

Mr. Clark commented that if NHDES doesn't feel comfortable, then they will either have stipulations or deny it. The permit application to NHDES goes to the Army Corps for environmental review. They will approve what they are comfortable with for the pilings. The contractor has to evaluate the level of risk. Other projects have found ledge and worked with the City to overcome that. Mr. Clark commented that the trash was still an issue. Some may say it is not part of the site plan review because the Board is just reviewing the wharf. However, this expansion will increase occupancy and trash, so the trash management is part of this. There appears to be some onsite issues already and it may be exacerbated by this expansion.

Mr. Chellman commented that he was generally in favor of the application but was not opposed to going out there to have a look and assess the trash and abutters. It felt a little rushed.

Mr. Gamester commented that this did not feel rushed because questions have been asked but some of those decisions are not in the Planning Board's per view. Those questions will be answered through the preconstruction process, NHDES, and federal review. There are other Boards they have to go through. They aren't taking a risk because if something changes, they will have to come back with an amended site plan.

Mr. Harris commented that the trash was still a question. The Board of Health may need to review that. Not taking that step to look at it now can become more of a violation. They should review it and make it part of the approval process.

Vice Chairman Moreau commented that trash may not be their per view because they have already approved where it is and how it functions. If it's not functioning how it is supposed to be, then they are out of compliance. That would be handled by the City.

Mr. Harris commented that it was in the Board's per view because they were being asked to approve an expansion. Chairman Legg commented that they have been told trash has been a problem for a decade and for whatever reason it has not been resolved. If this expansion would exacerbate the problem, then it would be in their per view.

Mr. Britz commented that he had not hear a complaint on this one specifically, but there are a lot of complaints about trash in that part of the City because there are a lot of restaurants in that area. The project was approved through site review. All projects in that area have a construction mitigation management plan that looks at how trash is dealt with and how the site is accessed. The City has not heard that they are out of compliance, but they have not investigated that specifically.

City Manager Karen Conard commented that if this was a concern from the abutter, then the City would take action on it. It would be the City's administration that would ensure the applicant is adhering to the Board of Health standards.

Mr. Gamester commented he appreciated that applicant has argued that the number of diners may not increase. The expansion would just allow more people to sit outside. However, the reality is that it does increase the ability to have more patrons. Mr. Gamester questioned if the trash situation could be improved. If they are in compliance, then it is tough to deal with. Formal complaints should be made if they are out of compliance. It may not make sense to include this as a condition, but the City and owners should collaborate to improve the trash situation.

Mr. Chellman commented that it could be a simple condition saying there should be an administrative view by the Board of Health. Chairman Legg agreed it was appropriate to add as a condition to highlight the concern and ensure the property owner works with the City to address the issue.

Chairman Legg commented that he did not feel this was rushed. It is unusual to have multiple hearings for a site plan review. DES will fulfill its responsibilities as it relates to the pilings etc. DES has the expertise and regulations to review that. The approval of the site plan will not influence DES's decision. They will evaluate based on their criteria. If they deny it, then the project will be denied. If the project is changed significantly, then they will be back for another review. Approving this tonight is not a risk. The only issue was the trash, but the condition covers that.

Mr. Pezzullo commented that the responsible party for the ongoing maintenance of the deck under the City's easement should be included as a stipulation. Chairman Legg agreed and clarified that it should be the owner's responsibility.

Vice Chairman Moreau moved to grant Site plan approval, seconded by Mr. Gamester with the following stipulations:

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.
1. a) Easements on the plan and instrument recorded at the registry shall depict the easement to run from Bow street to and through the stairwell to be inclusive of the area depicted as the public deck in the McHenry plan A9 to include ADA access to run with the land
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 the City Council.
3. Proper signage shall be posted for public space to be consistent with the Board's request from the Street to the public space.
4. Deck to be built in its entirety including public space for this project to be considered complete.
5. Applicant is to do pre-site inspection and vibratory monitoring throughout the project to identify any impacts to abutting properties.
6. Property owner is to work with city staff to resolve trash issues through the Construction Management and Mitigation Plan (CMMP) process.
7. Property owner is to be responsible for maintenance of the deck forever.

The motion passed by an 8-1 vote. City Council Representative Whelan opposed.

- D.** The request of **Dagny Taggart, LLC (Owner)**, for property located at **93 Pleasant Street** requesting Site Plan Review approval for the redevelopment of the existing 4 story structure and the construction of a new structure totaling 34,266 square feet of commercial space and 18 parking spaces. Said property is shown on Assessor Map 107 Lot 74 and lies within the Historic, Downtown Overlay, and CD4 Districts. (LU-21-183)

## **SPEAKING TO THE APPLICATION**

Mr. Chellman recused himself from the application.

John Chagnon from Ambit Engineering spoke to the application. The proposal is for a 2 story and short third addition to the back of the existing building. Currently there is a surface lot. They will create underground parking. The site plan shows the site layout and addition to the rear office. The building is on the corner of Pleasant St. and Court St. Access to the lower parking will be a ramp on Court St. The project originally proposed micro units, however, due to abutter opposition that was eliminated. Now the proposed use will be office only. The HDC has approved the project. TAC recommended approval with conditions, and they are happy to address them all. The parking level plan shows the ramp and 18 parking spaces. The utility plan shows the service transformer location and connections on the east end. The site is currently mostly impervious surface, so that is not really changing. They will provide storm water treatment with an inline filtration system for the roof runoff and a series of R tanks. Runoff will be directed to the City drainage.

Landscape Architect Terrence Parker from Terra Firma commented that the existing historic fence will be renovated and extended along the perimeter of the building as a security fence. It will be the same design as what is there now. The building's main address will be on Pleasant St. The sidewalks will be granite and with new granite pavers. The embankment will be planted with plants that are historically correct for the Treadwell mansion. There will be service berry trees on the corners. The transformer will be screened by arborvitae. Bike racks and the flagpole on Court St. The garage entrance preserves the historic granite wall. There will be a row of understory trees that allows more vegetated screening along the back of the building. There will be steppingstones in the lawn. They will grow vines up the broad face of the temple side of the building.

Tracy Kozak commented that they went to several sessions with the HDC and received approval. The primary design element was to keep the historic granite wall intact as much as possible. The handicap entrance to the building will be next to the garage entrance. The primary entrance is off Pleasant St. The upper floors are all office use. The addition massing and design will be subservient to the mansion. The plan got variances to allow that. The addition is 2 brick houses connected with recessed areas in between. The existing mansion will be restored. The addition will be brick and the recessed buildings will be composite clapboard.

Rebecca Brown from GPI commented on the traffic. They put together a traffic impact assessment for TAC which included evaluation of trip generations and parking demand. They also assessed the safety of the drive access. Based on ITE data the peak hours will generate 30 vehicle trips. The parking underground will be for the employees of the owner-occupied office. The remaining parking would occur in off-site public parking and garages. That means half of the trips will go to the site and the other half will go to other parking areas. They were not required to do any additional impact assessment. They did a safety analysis and looked at the crashes at Pleasant St. and Court St. and Washington St. and Court St. intersections. All study areas had 2 crashes or less over the study period. Ms. Brown reviewed the sightlines at the site driveway. Cars can see through to the intersection of Pleasant St. and Court St. on the west side. When the vehicle is stopped before the sidewalk people will be able to see 53 feet to the east side. That would allow people to see pedestrians approaching on the sidewalk. Once they see it is clear they can move forward to be at the edge of the sidewalk to see further down the road. Then they can see 80 feet down the road. That is adequate for vehicles going 15 mph. The sightlines are adequate. The proposal also includes installing a convex mirror on the utility pole across the drive and implementing a pedestrian alert system. There will be a black post mounted in the ground near the drive that would illuminate when a car was exiting the driveway. It would light up with the words "car coming" and the yellow bars will start flashing. It will be posted at the top of the ramp to alert cars and pedestrians of that a car is exiting the garage. There will also be a black post at the bottom of the ramp to alert exiting cars that a new car is entering.

Attorney FX Bruton commented that he was present to answer any questions. They have gone through quite a bit of work to get here and received approval from all prior boards. The project meets site plan regulations and requirements.

Vice Chairman Moreau questioned what would trigger the black posts. Ms. Brown responded that the garage door will open and close when vehicles come and go. When the garage door opens the car coming post will activate. There are supplemental sensors on the ramp to activate the bottom post. Vice Chairman Moreau questioned how trash would be handled. Ms. Kozak responded that there would be a trash room in the garage, and it would be removed via the ramp and hauled away.

Mr. Clark questioned where the solar panels would go on the building. Ms. Kozak responded that there was a note on the roof plan that says the location of the future solar panels would be in the middle section behind the gable roof. There is a flat area there.

## **PUBLIC HEARING**

Elizabeth Bratter of 159 McDonough St. commented on a general problem that she hoped the City would address. This building is in the CD-4 district and across the street is the CD-4 L-1. Right now, the buildings abutting State St. look at a parking lot, so they have a view. If this is approved, then their view will be a building. There is not intermittent zoning. It is very big buildings with limited green space.

Second time:

John Chagnon from Ambit Engineering commented that they agreed with the proposed conditions, however, number 2 was not relevant to this case. There has been some discussion on whether or not number 6 applied. Chairman Legg noted that the conditions 8 and 9 had been revised. Chagnon commented that he had not seen that update but would review.

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

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

Mr. Gamester moved to grant Site Plan approval, seconded by Vice Chairman Moreau with the following stipulations:

### Conditions Precedent:

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. Any easements plans and deeds for which the City is grantor or grantee shall be reviewed and approved by the Planning and Legal Departments prior to acceptance by the City Council.
3. The Applicant shall prepare a Construction Management and Mitigation Plan (CMMP) for review and approval by the City's Legal and Planning Departments.
4. 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 right of way and on site.
5. The Applicant or engineer shall submit a copy of a completed Land Use Development Tracking using the Pollutant Tracking and Accounting Program (PTAP) online portal currently managed by the UNH Stormwater Center of Similar form approved by the City.

6. R-Tank shop drawings are to be submitted and approved by DPW before the building permit is issued.

7. A potential underground grease trap location is to be displayed on plans.

Conditions Subsequent:

8. 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.

9. A stormwater inspection and maintenance report shall be completed annually and copies shall be submitted to the City's Planning and Public Works Department.

10. Applicant to obtain a license for the electrical conduits that are to be installed in the public right of way.

Mr. Gamester commented that this was a good project. The construction and design are appropriate for the area. It is good that they are keeping the wall intact by moving the underground parking entrance.

Mr. Pezzullo commented that they would need access for the utilities for the conduits on the transformer pad shown going to Court St. They will need a license from the City to install the electrical conduits in the City right of way.

Mr. Clark commented that the project works and meets the rules and regulations. It is unfortunate that the residence plan could not work. It was a good concept going in.

Chairman Legg agreed the City needs more apartments of different sizes. The original proposal met a need. It is understandable that it was challenging to the neighborhood and developer. It is a better looking project, but it's unclear that if the program is as good as the housing would have been. The design works and the landscaping is great.

The motion passed unanimously.

- E.** The request of **Torrington Properties Inc. (applicant)**, on behalf of **2422 Lafayette Road Associates, LLC (Owner)**, for property located at **2454 Lafayette Road** requesting to amend a previously granted Conditional Use Permit to provide less than required parking in accordance with Section 10.1112.14 of the Zoning Ordinance and Conditional Use Permits for increased housing density and for increased building height as allowed by Section 10.5B72.10 and Section 105B72.20 of the Zoning Ordinance, and development within the Gateway Neighborhood Mixed Use District in accordance with Section 10.5B40 of the Zoning Ordinance; and for Site Plan Review to demolish the existing structure and construct a five (5) story structure with 95 condominium units with 20% designated as workforce housing units and provide 21,896 square feet of community space. Said property is shown on Assessor Map 273 Lot 3 and lies within the Gateway Neighborhood Mixed Use Corridor (G1) District. (LU-21-192)

## **SPEAKING TO THE APPLICATION**

Attorney John Bosen, Jay Bisognano, Gregg Mikolaities from August Consulting, Patrick Crimmins from Tighe and Bond, and Rob DiSalvio from Embark Architecture spoke to the application. Mr. Bosen commented that they have worked hard to make sure that this is a successfully well-designed gateway project. It has been vetted through TAC and they received their approval. The project involves demolishing the existing movie theater building a 5-story structure that will include 20% workforce housing and a lot of community space. They will need an amendment to the previously granted Parking CUP. This is a well thought out project that meets City, public realm, and workforce housing requirements. It achieves the Master Plan goals of creating a walkable mixed-use development.

Patrick Crimmins commented that they submitted a comprehensive package. They have been here previously here for Conceptual Consultation and Design Review. This is in the Gateway District, and they are seeking a CUP for site development standards and are seeking a density bonus. The project is required to provide 10% community space and the proposal will provide 14.6%. Also 20% of the units will be workforce housing. The 5-story building will have 95 units total. The first floor will have covered parking with amenity and lobby space. The floors above will be residential units. There will be an attractive drop off roundabout at the entrance of the building. The residential portion of the site will have 177 designated parking spaces. The first floor will cover 83 of those spaces. The community space includes the plaza, pickle ball courts for public use, an additional park, and a dog park area. The site has already been improved with advanced storm water treatment. There will be infiltration throughout the site. They have received appropriate approvals from DES. All of the existing utility connections can be reused. A hydrant will be added in front of the building. The landscaping will include street trees and landscaped seating and patio areas. The plaza will have decorative pavers. There will be landscaped screening between the restaurant and community space. They are required to provide public realm improvements as part of this project. They are proposing to build 700 linear feet of new multi-use path along Constitution Ave. The project team also designed a multi-use path for the remainder of the road. It will be primarily in the existing paved area of the right of way. The path will include drainage improvements and catch basins. The design was coordinated with DPW. Through meeting with various City Boards, they have responded to feedback and addressed stipulations. In 2016 the Veridian was approved with slightly different parking ordinance. The ordinance was changed in 2018 and the shopping center use was eliminated. Now they have to calculate each use in the parcel or perform a parking demand analysis. When Pinz went in, they got a CUP for parking. This is an amendment to that approval and it is a less intensive parking use. Veridian has designated parking. This new residence will now have 177 designated spaces. That leaves 470 spaces for the retail and restaurants. It is more than what is there now for the businesses. They are seeking a CUP for site develop standards as well. The project is consistent with the Master Plan goals. It is promoting walkable areas and improving access to recreational spaces. The site compliments its surroundings because there is already one residential building. It complements the mixed-use space. The project will add 95 units to the housing stock and 19 of them will be workforce housing to accommodate different levels of income. The project has negligible or reduced impact on traffic. The storm water treatment has been designed. There will not be any added demand on municipal systems. The project will maintain the existing character of the neighborhood. It meets the standards outlined with is meeting multiple Master Plan goals. All of the units will be for sale and the workforce housing will be an average or minimum of 1,000

sf. The workforce housing has been identified on the floor plans. They met the criteria to build off site for the public realm improvements because the frontage has already been built out. This plan will be adding to it. The multi-use path will be constructed as part of the project. They are seeking a modification of standards. The site was previously developed. The site by right allows for 16 units per acre. The proposal is for 95 units. Splitting this into smaller buildings would be too challenging.

Rob DiSalvo commented that they tried to cover as much parking as possible on the ground floor. The lobby, fitness space and bike storage are built out in front of the covered parking to screen it from view. The second floor will have an outdoor plaza. There will be private outdoor deck space for the second-floor units and a common area lounge. Floors 3 and 4 will be standard residential units. The top floor sets in from the lower floors. Every unit has some degree of outdoor space. The building should fit into the complex. The drop off area will manage traffic and have greenery.

Mr. Clark questioned how the residents would access the path on Constitution Ave. Mr. Crimmins responded that they can utilize Water Country access road but there is connection out from the Veridian as well via the sidewalks. Mr. Clark questioned how bike traffic would access it. Mr. Crimmins responded that they would have to ride out to it via the access road or walk their bike on the sidewalks. Mr. Clark questioned if they looked at creating a bike lane. Mr. Crimmins responded that it wasn't possible because the space was too tight and there is an existing easement. Mr. Clark questioned what the hours on the pickle ball courts would be. Mr. Crimmins responded that it was community space, and the hours would be coordinated with the City. Lights have been included on the courts. The operations and maintenance will be outlined in the community space agreement as well as the hours.

Mr. Chellman requested more details on their calculations of the building size and units per building. Mr. Crimmins responded that the Board was allowed to modify the standards outlined by the ordinance. Mr. Chellman commented that one point in the ordinance calls out the units per building. Mr. Chellman did not object to more units for the site but was curious how they calculated that in the ordinance. Mr. Britz commented that the ordinance states that the Planning Board can modify the standards in the density bonus thresholds, and that applies to the whole section.

Vice Chairman Moreau requested more detail regarding the workforce housing and questioned if they can agree to 20% at 80% median income and include some larger units. Mr. Bosen responded that they were proud to offer 20% workforce housing units. They are providing 19 units for sale. That is the first of this size in the City. They have determined what qualifies as workforce housing by state law. The area median income is determined by HUD. Workforce housing is based on an income that is no more than 100% of median income for family of 4. This plan is following the statute requirements. The City commissioned a housing study in 2016 and that study recognized that they needed more housing to attract talented people. The study calls up a missing middle and the applicants believe these condos will address that. They will be moderately priced. They will not be able to build a unit at 80% AMI without losing money. They are in favor of workforce housing, but if the Board makes it so difficult, then it can have the counter effect. A private developer should meet the statute and that's what this plan is doing.

Anything beyond that puts this project at risk. Mr. Bisognano agreed with Mr. Bosen. They are proud to deliver 20% workforce housing at 100% AMI. This project is not receiving any subsidy and is privately funded. Mr. Bisognano has created workforce housing in many towns and cities, and was not sure if they had been able to meet the statute the same way they have here. If the consensus is to go to 80% AMI, then they would have to produce less housing units. It will cost \$420,000 to build a unit. Mr. Bisognano did not mind breaking even on the workforce housing, but they could stand to lose a fair amount of money on each unit at 80% AMI. 20% of the units at 100% AMI is a huge win. Less than that will result in a smaller number of units. Mr. Bosen added that they were exceeding the public realm requirements. They could offer a longer covenant instead of a lower AMI. Chairman Legg commented that he felt pretty strongly about the 19 units but wondered if half of the workforce units could be 80% AMI and the other half at 100% AMI. Mr. Bisognano responded that was a good suggestion. However, they are not delivering until late 2023 and that is a risky suggestion because the market could change. Mr. Bisognano was willing to commit to 100% AMI for 19 units. Anything else is a big consideration.

Vice Chairman Moreau questioned if they could stay at 100% AMI and do a 50-year covenant give with an additional 3 bed unit as part of the workforce housing mix. Mr. Bisognano responded that the proposed workforce housing is evenly spread through the building. People want different types of units, and the workforce housing would always be equal opportunity. Chairman Legg commented that there were 11 three-bedroom units and there is only one in the workforce housing mix. There should be 2. Mr. Bisognano confirmed that they could commit to equal distribution throughout the building.

Vice Chairman Moreau questioned if parking would be assigned for residents and if so where would the visitor parking be. Mr. Crimmins confirmed that was correct. The visitors could park in the remainder of the plaza outside of the shaded area on the plan. There are crosswalks and connectivity from the other parking area too.

Mr. Gamester requested clarification about whether or not they were sticking with the 100% AMI because the 80% AMI is too low. Mr. Bisognano confirmed that they can produce 19 units at 100% AMI. Deviation from that would be difficult to answer or commit to on the fly. Any lower AMI would prevent for them from providing 20% workforce units at this time. They can commit to 50 years and equally distributed units.

Mr. Chellman commented that he was in favor of workforce housing, and the proposal exactly conforms with the ordinance. Chairman Legg commented that the ordinance has flexibility to go as low as 80% AMI. Mr. Chellman commented that was understood but they met the ordinance, and it was a good proposal. Chairman Legg agreed that it was better than nothing, but it was good to ensure they could not do better.

## **PUBLIC HEARING**

Rick Becksted 1395 Islington St. spoke as resident. The Board should hold them to the 80% AMI. Otherwise, they should not approve this. This Board granted the Veridian with 7

stipulations and special exceptions. The Board needs to stick to their guns on the 80% AMI. The median income will change in 2023. The Board and Council needs to make bold moves. Portsmouth has only so much land left. They need to consider what this will do to the City's infrastructure. The current residents must cover those costs. McKinnons is overcrowded. There are a lot of concerns about traffic flow. There are issues now without this building.

#### Second time speakers

Gregg Mikolaities commented that this project was spending close to \$300K off site on the multi-use path and designing the rest of the path as well as engineering and permitting. The cost of workforce housing is the cost of doing business. There is one pot of money, and they can only build so much. This project includes a lot of public realm improvements.

Rick Becksted of 1395 Islington St. commented that it was understood the public realm improvements were icing on the cake. Portsmouth has not defined how many units they need to solve the housing crisis. 80% AMI is not that big of an ask. The price and median will go up by the time this is built. They are pricing themselves out of this town. Two bed condos sell for \$450K. That impacts the price of single-family homes. The Board needs to hold their ground at 80%.

Attorney John Bosen reiterated that they were meeting all of the requirements of the ordinance and are giving more than what is required. They are meeting the definition of workforce housing in the ordinance and statute. This project is addressing the missing middle. The high cost of the market is not a problem they created. It is a problem all over the country. People come here for a reason. It's because it's desirable place to live.

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

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

Vice Chairman Moreau moved to find that the number of off-street parking spaces provided will be adequate and appropriate for the proposed use of the property and to grant a conditional use permit as presented, seconded by Mr. Gamester.

Vice Chairman Moreau commented that there was additional parking in other places, and it was a complimentary use.

Mr. Gamester agreed. This was adding to a mixed-use space and there was already a residential building there.

The motion passed unanimously.

Vice Chairman Moreau moved to find that the application meets the requirements of Section 10.5B43.10 and to grant a conditional use permit for a Development Site subject to the requirements and conditions of site plan review approval, seconded by Mr. Gamester.

Mr. Gamester commented that the site was already developed. This has been before the Board a few times for different projects. This achieves Master Plan goals of creating a walkable and accessible area. The pickle ball courts are an enhancement, and this is adding housing stock to the City.

The motion passed unanimously.

Vice Chairman Moreau moved to find that the application meets the requirements of 10.5B11 and 10.5B73 of the Zoning Ordinance and to grant a conditional use permit for density bonus incentives, seconded by Mr. Gamester with the following stipulation:

- 1) Workforce housing units are subject to a 50 year covenant with a 20% even distribution among living unit sizes.

Mr. Gamester noted that they have heard the developer's comments that it meets the ordinance and statute. The comments from some of the public are to stick to the 80% AMI. They can enforce that and potentially have the developer not follow through with the project. It would have been good to get more than 19 units at 100% AMI. Mr. Gamester commented that it doesn't sit well, but he would vote in favor.

Vice Chairman Moreau commented that it is always good to get more, but it is hard to justify voting against something that meets the ordinance. The 50-year covenant and evenly distributed units of size was a good negotiation. It is better to have some than none. The West End Yards was this Board's first stab on insisting on workforce housing. They didn't get all they requested there either. They will continue working on this.

Mr. Chellman commented that everyone wants more workforce housing and the way to get it is to work with the developer and change regulations. Requesting beyond the ordinance is not a negotiation it's a demand. If the proposal meets the ordinance, then they should not ask them to go beyond that. If the Board chooses to exceed that and the developer agrees, then that's great. Everyone is in agreement that they need more workforce housing. It costs a lot of money to bring a team together and create these plans. They are created based on the rules that are published. The Board needs to be careful about requesting more than that.

Chairman Legg commented that the ordinance defines workforce housing as up to 100% AMI, but it doesn't mandate 100%. "Up to" suggest that the Board the has ability to request less. Chairman Legg understood and appreciated that the developer is looking in the future. It is hard to know what numbers look like. Chairman Legg questioned if they could stipulate that when this project is being developed, they asses the new data and work with city staff to see if they can bring some of the proposed 19 units below the 100% threshold.

Vice Chairman Moreau was concerned about whether or not they could legally do that. They would be approving one thing and then asking them to reconsider and them give more later. Mr.

Chellman agreed and was concerned that the stipulation was not giving them an actual approval. Chairman Legg commented that two years from now the numbers will have changed, and it would be good to add a condition for them to come back and work with the Planning Department on the AMI.

Mr. Gamester commented that it seems like there are too many loose ends with a condition like that. Vice Chairman Moreau agreed and noted that she did not think they could do it legally.

The motion passed unanimously.

Vice Chairman Moreau moved to grant Site Plan approval, seconded by Mr. Gamester with the following stipulations:

Conditions Precedent:

- 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) 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.
- 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.
- 4) 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.
- 5) 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.

Conditions Subsequent:

- 6) The Engineer of Record shall submit a written report (with photographs and engineer stamp) certifying that the stormwater infrastructure was constructed according to the approved plans and specifications and will meet the design performance as proposed.
- 7) A stormwater inspection and maintenance report shall be completed annually and copies shall be submitted to the City's Planning and Public Works Department.

Vice Chairman Moreau commented that there was already a giant building, parking lot and utilities there. This would be changing the use and function and create more symmetry in the site.

The motion passed unanimously.

- F. The request of **35 Pines LLC, (Owner)**, for the property located at **295 Maplewood, Unit 1** requesting a Conditional Use Permit Approval in Accordance with Section 10.1112.14 of the Zoning Ordinance, for the provision of no on-site parking spaces where three (3) spaces are required. Said property is shown on Assessor Map 141 Lot 35 and is located in the Character District 4-L2 (CD4-L2) and Historic District. (LU-21-211)

Minutes, Planning Board Meeting, December 30, 2021

Mr. Gamester moved to extend the Planning Board Meeting past 10:00 p.m., seconded by Vice Chairman Moreau. The motion passed unanimously.

### **SPEAKING TO THE APPLICATION**

Mr. Gamester recused himself from the application.

Patrick Lavoie is the owner of Port City Barbers and spoke to the application. Mr. Lavoie is the sole proprietor of the business and has been in business for over a decade. Mr. Lavoie and his wife closed on this property at the beginning of November. The shop is appointment only and each appointment is booked in 1-hour increments. There are no customer overlaps or additional walk ins. The goal is to keep the clients and community safe during Covid. This model will continue indefinitely. There is parking on Jackson Hill Rd. and at the public boat launch. The surrounding roads have public spaces and metered lots. Many clients walk or bike to their appointment. That eliminates the need for parking completely. This permit is important to allow Mr. Lavoie to continue serving the community and operating his business. This was previously used as an insurance company, and it functioned without parking. This will remain residential units and one commercial space.

### **PUBLIC HEARING**

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

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

Vice Chairman Moreau moved to find that the number of off-street parking spaces provided will be adequate and appropriate for the proposed use of the property and to grant the conditional use permit, seconded by Mr. Clark with the following stipulation:

1) If more chairs are added the applicant must come back for a Conditional Use Permit review and amendment.

Vice Chairman Moreau commented that there was already a business with a more intensive use in this building. The stipulation covers it if any more chairs are added.

The motion passed unanimously.

- G.** The request of **Public Service CO of NH (Owner)**, for the property located at **300 Gosling Road** requesting a Wetland Conditional Use approval according to section 10.1017 is requested for the replacement of 8 utility poles adjacent to Gosling Road. The project proposed temporary impact of 98,984 square feet in the wetland area and of 25,224 square feet in the wetland buffer. The proposal is to replace existing wooden structures with equivalent steel structures. Said property is shown on Assessor Map 214

Lot 3 and is located in the Office Research (OR) and Waterfront Industrial (WI) Districts. (LU-21-205)

### **SPEAKING TO THE APPLICATION**

Lindsay White from GZA Environmental and Ashely Rupect spoke to the application. The CUP is for temporary wetland and buffer impacts for replacing the utility poles. There are 3 transmission lines that run parallel to each other in one corridor. There are 8 poles on Gosling Rd., 5 on Borthwick Ave., and 2 on Greenland Rd. During a routine inspection these poles were determined to be in need of replacement because of deterioration. The proposal is to start in February 2022 and extend to late May. The project requires temporary wetland and buffer impact for access to the poles and timber work pad placement to stage equipment. When the work is complete the timber matting will be removed, and the area will be stabilized with seedless mulch. They met with the Conservation Commission and received approval. They will be submitting an application to DES as well.

Mr. Clark questioned where they would be cleaning the matting before it is moved down the transition line. Ms. Rupect responded that before the matting is removed from a location, they would sweep the mats. They will not transfer anything to another site.

### **PUBLIC HEARING**

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

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

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

Mr. Clark commented that these have come to the Board before and for the most part everything works. This is consistent with what they have seen in the past.

The motion passed unanimously.

**H. REQUEST TO POSTPONE** 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 (LU-21-189)**

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

Mr. Gamester moved to postpone to the January 20,2022 Planning Board meeting, seconded by Mr. Clark. The motion passed unanimously.

- I. The request of **The City of Portsmouth (Owner)**, for property located at **0 Vaughan Street** requesting a Wetland Conditional Use Permit under section 10.1017 to restore a piece of property along the North Mill Pond into a City Park, Greenway and Living Shoreline project. The project as proposed includes restoration of 57,520 square feet of restoration work in the Wetland and Buffer with project impacts of 262 square feet in the wetland and 5,490 square feet of impact in the 100' wetland buffer. The project includes the removal of invasive plants, planting of native species to restore the vegetation on the site. The restoration work is proposed in the subtidal, intertidal, and tidal buffer portions of the site. Said property is shown on the Assessor Map 123 Lot 15 and lies within the Character District 4 (CD-4). (LU-21-187)

## **SPEAKING TO THE APPLICATION**

Patrick Crimmins from Tighe and Bond spoke to the application. This is a piece of land that the City acquired with the AC Hotel approval. The site presents a good opportunity for restoration and a public amenity. The proposal is for a porous asphalt multi use path. Prior renditions included public piers. Those piers were removed to reduce impact. The impact is outlined in the buffer exhibit. There will be 57,664 sf of restoration and a little over 5,000 sf of total impact. The porous asphalt and pier count toward that but will serve as infiltration and provide light penetration. The proposed living shoreline will have a mussel bed that will serve as a natural filter for nutrients. The tidal bank has eroded, so they will stabilize that bank with a two-sill living shoreline to mimic coastal shorelines. They will use salvage rock and sand to grow lower marsh vegetation. The next step up will include native plantings. They will create habitat. The invasive plants that are there now will be removed with the exception of the Norway Maples that are more than 6 inches in caliper. Construction oversight observation is required as part of the DES approval. They have teamed up with UNH and Northeastern to construct the shoreline. After care and maintenance will run for 2-5 years to ensure growth and that the living shoreline is thriving. They met with the Conservation Commission. They had comments and concerns, so they had a work session in November then met with again in December and received approval. The boardwalk was reduced in size, and they eliminated the 1-foot gravel shoulders on the multi-use path. This is truly a restoration project, and it hits on all the criteria.

Mr. Britz commented that this was a City project and was part of the North Mill Pond Greenway.

Mr. Clark questioned what the bulkhead was in the cross section. Mr. Crimmins responded that they were referring to the existing bulkhead that was already out there. Mr. Clark questioned

what kind of mitigation measures they were taking in relation to the historic nature of the site. Mr. Crimmins responded that they were building the site up and capping what's out there. They were not planning to dig down. The only excavation that will occur is for the path. Mr. Clark commented that he has seen a lot of collaborative efforts with the State's Historic Preservation on signage or investigation. Mr. Britz responded that there was a lot of opportunities for interpretive signage. Mr. Clark commented that it was a fantastic opportunity to go above and beyond with signage or art to build on what this area was. Mr. Crimmins responded that they were aligned with the vision and are looking for education opportunities and outreach on the site.

## **PUBLIC HEARING**

Elizabeth Bratter of 159 McDonough St. commented that this is what they should be putting this in with every development along the North Mill Pond. The Board should enforce the living shoreline. Mr. Britz has worked tirelessly to provide public access and still protect the wetland with the Conservation Commission. The Board should approve this.

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. Clark moved to grant the Wetland Conditional Use Permit, seconded by Mr. Gamester with the following stipulations:

- 1) The applicant shall incorporate "No Digging" signage into the site signage.
- 2) The applicant shall consider measures in the planting plan to work towards reducing the number of geese on site.

Mr. Clark commented that living shorelines can be tough to get going, but ultimately this is what they should be striving for. It will be interesting to see how this site trickles into the abutting sites.

The motion passed unanimously.

## **VIII. PRELIMINARY CONCEPTUAL CONSULTATION**

- A.** The request of **Port Harbor Land LLC**, for the property located at **2 Russell Street** requesting Preliminary Conceptual Site Consultation 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 property is located on Assessor Map 124-12 and lies within the Character District 5 (CD-5). (LUPD-21-10)

Brook Sloken spoke to the plan for the building and the site. This was previously approved with an earlier development. They are currently trying to get read on how to move forward. The plan is to break this into 3 different buildings. There will be a rental building, condos, and an office. There will be at grade parking with a liner building on Deer St. and Russell St. Parking will be

under the center of the building. There will be a 4-story office building and the other two buildings will be 5 stories. There will be 30% or more open space. Some of it is on the adjacent site. There will be two view corridors that will allow the passage of street through the site. It will create an opportunity to use some of the site in front of the Sheraton and the piece across the street on Green St.

Mr. Clark commented that he was not a fan of the community space. The Board has seen a lot of good community space in recent large projects. There can be a lot more activation down by Maplewood Ave. Activation on the corner would be great. The plazas there will have the same issue that Portwalk does. It will be cold and shaded the whole time. The buildings as proposed will look like a giant bow of a ship coming up Russel St. The project is shoehorned in. It may make more sense to do workforce housing to get the incentive instead of community space.

Vice Chairman Moreau questioned if they took into account the future traffic circle. Mr. Sloken confirmed that they did take the roundabout into consideration. They are allowing the street to pass through and is allowing a visual corridor from the old part of town into the north. The view corridor is critical because that street carries through town. There are plans for stairs to allow movement across site without having to go to Maplewood Ave. It is important to have a public gathering space.

Vice Chairman Moreau questioned if some of these units would be for sale and others for rent. Mr. Sloken confirmed that one building would be rentals and the condos would be for sale. Vice Chairman Moreau questioned if they were trying to get crossing through the railroad to give access to Portwalk Place. Mr. Sloken responded that they were not. The plan was to provide a sidewalk to the proper crossing. Vice Chairman Moreau commented that they should have a good plan for activating things like trash, restaurant space, storage, snow maintenance.

Mr. Chellman noted that they were proposing some community space in front of the Sheraton and questioned if both properties would come in for a site plan review at the same time. Mr. Crimmins responded that would be the intent. There is a shared parking component that will be reviewed as well.

Chairman Legg commented that he liked the view corridors and the 3 buildings. They do need to work to improve the community space for the incentive. The Board has allowed some hodgepodge community space in the past. The view corridor is great, but not of community space. The building on Russel St. should step down in some way. Chairman Legg strongly encouraged that they try to get incentives through workforce housing. This is better than what was proposed previously, but still has a long way to go. Mr. Sloken commented that this was the same scale of the Sheraton and further away from Market St. than the Sheraton. It doesn't impose on Market St. It is tough making it a usable building and fitting in a narrow site.

## **X. OTHER BUSINESS**

Mr. Clark commented that it was the last Planning Board Meeting for Mr. Gamester, City Council Representative Whelan, Ms. Henkel, Vice Chairman Moreau, and Chairman Legg. Mr. Clark thanked them for their willingness to listen to his comments and their support. Everyone

on the Board put in 10 hours this month just in the meetings. That does not include the amount of time they took to prepare for the meetings. This last packet over 1000 pages long. Mr. Clark said thank you for all of the time and effort they put into this volunteer position.

Mr. Gamester appreciated that he has had the honor to serve for 8.5 years. All of the members, chairs, and professionals have been amazing. It was fun being on the Board and see projects come to fruition. Mr. Gamester stood by every decision he made on this Board. The Board always came at a fair outcome. In addition to all the applications the Board has worked on the CIP, Master Plans and zoning amendments.

Chairman Legg commented that he was grateful Mayor Jack Blalock appointed him to this Board and was grateful to have served as Chair 5 times. Chairman Legg was thankful for the support of the City Staff and their teams. Their professional expertise and dedication to Portsmouth was so appreciated. They made this a better Board and him a better Chair. Chairman Legg was thankful for the members of this Board and the work they have put in to come up with informed decisions. People can't criticize the process that this Board and other Boards take. The Board consists of fully engaged, thoughtful and respectful members. The process the Board followed is the gold standard of how Boards should work. They treated each other, the applicants, and the public with respect. Chairman Legg has been on the Board 6 years and there has been quiet respect the whole time. There have been disagreements, but no one is disagreeable. Unfortunately, that changed 2 years ago. This Board has remained respectful, but others have become openly critical and hostile to this Board and other land use Boards. This Board and other Boards were blamed for what is perceived as over development. This Board's decisions are based on state statutes, the ordinances, and the facts that are presented. Decisions have to be fact based otherwise the courts will correct an overreach. If people want to change the outcomes, then they need to change the ordinances. This Board has put a list together of potential changes. They are waiting for a new Planning Director to come on board and work with them. The ordinances are a living document that needs to be refined. The incoming City Council should make thoughtful ordinance changes and reestablish the respectful treatment of the City's Boards. All of the Board members are volunteers. It takes a lot of time. Chairman Legg appreciated all of the work they have done and was honored to have worked with the other Board members.

## **XI. ADJOURNMENT**

Vice Chairman Moreau moved to adjourn the meeting at 11:45 p.m., seconded by Mr. Gamester. The motion passed unanimously.

Respectfully submitted,

Becky Frey,  
Secretary for the Planning Board

