

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

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

7:00 PM

May 19, 2022

MINUTES

MEMBERS PRESENT: Rick Chellman, Chairman; Corey Clark, Vice Chair; Karen Conard, City Manager; Joe Almeida, Facilities Manager; Beth Moreau, City Councilor; Greg Mahanna; Peter Harris; Jane Begala; James Hewitt; Andrew Samonas, Alternate;

ALSO PRESENT: Beverly M. Zendt, Planning Director; Peter Britz, Environmental Planner; Stefanie Casella, Planner 1

MEMBERS ABSENT: Franco DiRienzo, Alternate

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I. APPROVAL OF MINUTES

A. Approval of April 21, 2022 Minutes

Chairman Chellman noted that the April Minutes would be voted on at the June Planning Board Meeting.

II. DETERMINATIONS OF COMPLETENESS

SUBDIVISION REVIEW

A. The request of **Elizabeth B Larsen Trust of 2012 (Owner)**, for property located at **668 Middle Street** requesting Preliminary and Final Subdivision approval.

Vice Chairman Clark moved to determine that the application was complete according to the Subdivision Regulations, (contingent on the granting of any required waivers under Section VI of the agenda) and to accept the applications for consideration, seconded by City Council Representative Moreau. The motion passed unanimously.

- B.** The request of **4 Amigos LLC (Owner)**, for property located at **1400 Lafayette Road** and **951 Peverly Hill Road** requesting Preliminary and Final Subdivision approval.

Vice Chairman Clark moved to determine that the application was complete according to the Subdivision Regulations, (contingent on the granting of any required waivers under Section VI of the agenda) and to accept the applications for consideration, seconded by City Council Representative Moreau. The motion passed unanimously.

SITE PLAN REVIEW

- A.** The request of **Elizabeth B. Larsen Trust of 2012 (Owner)**, for property located at **668 Middle Street** requesting Site Plan Review approval.

Mr. Hewitt moved to determine that the application was complete according to the Site Plan Review Regulations, (contingent on the granting of any required waivers under Section VI of the agenda) and to accept the application for consideration, seconded by Vice Chairman Clark. The motion passed unanimously.

III. PUBLIC HEARINGS -- OLD BUSINESS

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

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

- A.** The request of **Donald Lowell Stickney III (Owner)**, for property located at **213 Jones Avenue** requesting Conditional Use Permit under section 10.814 of the Zoning Ordinance and modification of the standards set forth in Sections 10.814.40 or 10.814.52 through 10.814.56, to construct a new single family residence and convert the existing residence into a Detached Accessory Dwelling Unit totaling 886 square feet of living area. Said property is shown on Assessor Map 222 Lot 69 and lies within the Single Residence B (SRB) district. (LU-22-34)

City Council Representative Moreau moved to consider Agenda Items III. A and IV. A together and vote on them separately. The motion passed unanimously.

SPEAKING TO THE APPLICATION

John Chagnon from Ambit Engineering and Chris Mulligan spoke to the application. Mr. Chagnon commented that the application was for a CUP for an ADU and a CUP for wetland buffer impact.

Mr. Mulligan commented that the request for the CUP for the DADU was a little unorthodox in that they were proposing to construct a new free standing primary dwelling and utilize the existing dwelling as the ADU. In order to take advantage of the existing 862 sf dwelling they will need 3 waivers on dimensional requirements. They feel that all of the criteria is satisfied with the waivers. The structures will be on the same lot and conform to all zoning regulations.

They have a variance from the ZBA to put in a second driveway on the site. The plan meets the principle building setbacks. The primary residence will be in common ownership and Mr. Stickney will occupy it. They will not use either dwelling for business purposes and they do have a State approved septic plan. The plan meets the minimum lot area. The DADU regulations limit it to 2 bedrooms and less than or equal to 750 sf. This existing structure is slightly larger than that, so they are asking for a waiver. The next waiver request is for the façade area. The regulations say that it must be less than 40% of combined façade and this is 42%. The structure height will be less than the primary dwelling and the architecture will be consistent. The separation between the two structures will be 20 feet. The last waiver they are requesting is the front wall of the DADU being set back 10 feet further from the front of the primary dwelling. The only way they could comply with that would be to move the primary dwelling forward and get a variance or move the existing structure back. The ADU will maintain a compatible relationship with the primary dwelling and it will not alter or reduce the privacy of the abutters. There will not be excessive noise or parking. The ADU is already existing and integrated into the neighborhood. They had letters of abutter support included in the packet.

Chairman Chellman commented that the plan showed the structure as 886 sf. Mr. Mulligan confirmed that he misspoke. It is 886 sf.

Ms. Begala questioned if the new driveway would change where front yard is located. Mr. Mulligan responded that it would not. The existing drive is to the west of the ADU, and the new primary driveway will be in front of the ADU. The front yard of the property fronts on Jones Ave. It will continue to do that tomorrow. Ms. Begala questioned if the new structure would be closer to Jones Ave. Mr. Mulligan responded that the closest point was just over 30 feet. Ms. Begala requested clarification on how they measure the living square footage of an ADU. Ms. Begala questioned if the patio should be counted or not. Mr. Mulligan responded that they counted the floor area from the tax card. It does not include the patio. Ms. Begala questioned if that was correct. Chairman Chellman confirmed it was the gross floor area of the building space. It would not include the patio.

Mr. Samonas questioned if they evaluated the low spot on this land that collected water. Mr. Chagnon responded that they did include a drainage plan and he could present the information on the wetland CUP.

Mr. Chagnon commented that there would be 776 sf of impact on the buffer. They will be introducing a new State approved septic and eliminating the existing septic. Mr. Stickney has planted a lot of trees in the buffer area already and is planning to add more to the buffer area. The wetland comes across the back and has a finger that goes up into the lot. It is an oddly shaped buffer line. The runoff will drain from the back to the front to a 15-inch culvert on Jones Ave. They will retain the flow before it goes to the culvert. The buffer is in the back which means they cannot place the house in the back of the lot. That is why it is placed toward the front. They will slow down the flow by constructing a berm across the back portion of the lot to intercept and hold back water from coming down the front of the lot. Mr. Chagnon reviewed the wetland CUP criteria. The first is that the land is reasonably suited to the use, activity or alteration. Mr. Chagnon noted that this was a residential structure and the ADU is in the

residential zone. 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. Mr. Chagnon commented that the structure is in the front of the lot, and they need to work in the buffer for storm water treatment. The third is that there will be no adverse impact on the wetland functional values of the site or surrounding properties. Mr. Chagnon commented that the work was entirely in the buffer. There was no direct wetland impact. There will not be any adverse impacts to the functions and values. 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. Mr. Chagnon commented that they need to place the berm from one elevation to another elevation. That's the minimum length to adequately detain the runoff. The fifth is that the proposal is the alternative with the least adverse impact to areas and environments under the jurisdiction of this Section. Mr. Chagnon commented that they met with the Conservation Commission with an alternative design that had more buffer impact. They worked with the Commission to redesign the proposal to this, and they recommended approval. The sixth is that any area within the vegetated buffer strip will be returned to a natural state to the extent feasible. Mr. Chagnon commented that the berm will be a planted berm and it will go back to a natural state.

Vice Chairman Clark noted that there was a chicken coop, gravel walk, and garden in the buffer and questioned if those would be moved. Mr. Chagnon responded that they were not proposed to be moved at this time.

Ms. Begala commented that there was a large septic system and leach field area on the map. The proposal is to remove the existing dry well and septic. Ms. Begala questioned if they would be putting something back in to help with the flow of water. Mr. Chagnon responded that the existing septic is most likely under sized and closer to the water table than is allowed. The size of the septic system is based on the perk of the soil and the water table. The driveway and house grading are detailed on the grading sheet. There is a culvert under the driveway. Water will still be able to move and go to the culvert on Jones Ave. Ms. Begala commented that the septic area looked even larger. Mr. Chagnon commented that was the current septic. The proposed septic was designed to comply with DES rules.

Mr. Hewitt questioned if the second driveway complied with sight line distances. Mr. Chagnon confirmed that they would have 200 feet of sightlines. They will move the fence back to allow for that. The variance was granted on Tuesday, but they still need a driveway permit from DPW.

PUBLIC HEARING

Bob McDonald of 246 Jones Ave. spoke in support of application. Mr. Stickney maintains the property well and this is a good use of the ordinance.

Chairman Chellman 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

City Council Representative Moreau moved to find the application satisfies the criteria set forth in Section 10.107.50 of the Zoning Ordinance, seconded by Vice Chairman Clark. The motion passed unanimously.

City Council Representative Moreau moved to grant a modification to the requirements set forth in section 10.815.30, seconded by Mr. Mahanna.

City Council Representative Moreau commented that she looked at the tax card gross floor area which is 36' by 24'. That comes out to 864 sf. This is a unique property because of all the wetlands. The setbacks and zoning are compliant. It looks more like 2 lots than one. It is not a perfect DADU especially with two separate driveways, but because of the unique circumstance City Council Representative Moreau was fine to allow the modifications.

The motion passed unanimously.

City Council Representative Moreau moved to find that the application meets the requirements set forth in Section 10.814.60 of the Zoning Ordinance and to grant the Conditional Use Permit, seconded by Vice Chairman Clark. The motion passed unanimously.

IV. PUBLIC HEARINGS – NEW BUSINESS

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

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

- A.** The request of **Donald Lowell Stickney III (Owner)**, for property located at **213 Jones Avenue** requesting Wetland Conditional Use Permit under Section 10.1017 of the Zoning Ordinance to construct a new single family residence and convert the existing residence into a Detached Accessory Dwelling Unit totaling 886 square feet of living area. Said property is shown on Assessor Map 222 Lot 69 and lies within the Single Residence B (SRB) district. (LU-22-34)

DISCUSSION AND DECISION OF THE BOARD

City Council Representative Moreau moved to grant the Wetland Conditional Use Permit as presented, seconded by Mr. Hewitt.

Vice Chairman Clark commented that there were existing things out there close to the wetland and it would be good to move them back. The berm will be a good definition of where the wetlands are on the site. It will prevent creep into the wetlands. Chairman Chellman added that the new septic system will be better for the water as well.

The motion passed unanimously.

- B.** The request of **2422 Lafayette Road Associates, LLC (Owner)**, and **Waterstone**

Properties Group Inc. (Applicant), for property located at **2454 Lafayette Road, Unit 9** requesting Amended Site Plan Review Approval for the alteration of the commercial pad and sidewalk, rerouting the existing sewer line, relocation of bicycle racks, and the expansion of Unit 9 from an existing footprint of 1,833 s.f. to 3,650 s.f +/- and to then divide the space into two units equaling 1,155 s.f. +/- and 2,400 s.f. +/- . Said property is shown on Assessor Map 273 Lot 3 and lies within the Gateway Corridor (G1) District. (LU-22-46)

SPEAKING TO THE APPLICATION

Neil Hanson from Tighe and Bond spoke to the application. Mr. Hanson commented that they were looking to amend the end of the building, which is the current location of the diner. They will remove the diner and replace it with two retail units. Along with this reconfiguration the existing bike racks near the diner will be relocated and they will realign the curb. There is not a lot of work relating to drainage and utilities. The biggest piece is that they will relocate the sewer around the corner of the new building. The existing water service does not need any modification. They will be adding a roof drain connection and tying into the existing drain line. TAC had 3 stipulations. One was to replace the existing sewer manhole, and that has been included in the plan. They expanded the plan view to show the water tie in and included a trip generation memo for the change of use on the site. The weekday am peak will be reduced by 9 trips, the pm will be increased by 7 trips, and the Saturday will be increased by 4 trips. There will be a minimal change in traffic use. The Staff Memo includes a few recommendations that don't seem to apply to this. Portions of 1.1 relate to offsite and private easements needing to be recorded. There are no new easements proposed with this. 1.2 and 1.6 are also easement related. 1.4 requires a written report by a certified engineer. The only storm water change is the addition of the roof drain connection. It probably does not need to be engineer certified. 1.5 deals with reporting inspection and maintenance. There is a current inspection and maintenance plan that is part of this site from a prior approval. They should already be complying with that.

Chairman Chellman questioned if they needed an easement adjustment because they were rerouting the sewer line. Mr. Hanson responded that they did not because it was on private property and the City did not have rights to it.

Mr. Hewitt questioned if the proposal would be on the existing paved surface, so the impervious surface would remain the same. Mr. Hanson responded that it was. There may be a slight increase to the impervious surface but there was no change to the flow or treatment needed.

Ms. Begala questioned if there would be an increased parking demand. There's a bottleneck past the diner now. Ms. Begala questioned how they would prevent that from becoming more of a bottleneck. Mr. Hanson responded that they were not modifying the intersection at all. The change in trips will not change the site significantly. It's an increase of 4 trips overall. The diner generates 20 trips, and the retail use generates 24 trips. Ms. Begala commented that the diner was closed. Mr. Hanson responded that the trip generations were based off the ITE data which considers the square footage of the building and use of the building. Ms. Zendt commented that a traffic impact analysis was completed for the diner when that was built, so they have accounted for that parking, and it was considered. Even though it is closed today, those conditions still

exist. Mr. Hanson added that the retail use has a lower parking demand than a restaurant use. The parking demand decreases. That's how it's calculated through the City Ordinance and ITE.

Vice Chairman Clark questioned if the AOT permit for the whole site had been closed out. Mr. Hanson confirmed it had.

Ms. Begala commented that she did not see a pedestrian analysis. There are no sidewalks for pedestrians to make it across the sea of parking. Mr. Hanson responded that the site has two main pedestrian crossings which were put in as part of the original approval. When Chipotle was added they added connections to connect all of it. The site was designed under the old Gateway Ordinance that had a pedestrian walkability component to it. The site was designed with a pedestrian orientation in mind.

Mr. Harris questioned if the demands for parking took the new apartments into account. Mr. Hanson confirmed it did. They have a CUP for the site using the ITE data. That was revised and reapproved as part of the condo proposal.

City Council Representative Moreau questioned if the previous approval had any storm water maintenance reporting requirements. Mr. Hanson confirmed it did for the Veridian in 2016. City Council Representative Moreau question if that was still happening. Mr. Hanson responded that it should be, but that is the ownership's responsibility.

PUBLIC HEARING

Chairman Chellman 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 Clark moved to grant amended site plan approval, seconded by City Manager Conard with the following stipulations:

Conditions Precedent (to be completed prior to the issuance of a building permit):

1.1 The site plan, any new off-site easements to benefit the development, and any other new public or private easements shall be recorded at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.

1.2 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:

1.3 The Engineer of Record shall submit a written narrative (with photographs and engineer stamp) certifying that the stormwater infrastructure was not altered from previously approved plans and specifications that meets the design performance;

1.4 A stormwater inspection and maintenance report shall be completed annually and copies shall be submitted to the City's Planning and Public Works Departments. 1.6 Any easement plans and deeds for which the City is a grantor or grantee shall be recorded at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.

The motion passed unanimously.

- C. The request of **Elizabeth B Larsen Trust of 2012 (Owner)**, for property located at **668 Middle Street** requesting Preliminary and Final Subdivision approval to subdivide 1 existing lot with 81,046 square feet of lot area, and 69.83 feet of street frontage into 3 lots as follows: Proposed Lot 1 with 18,646 square feet of lot area and no street frontage; Proposed Lot 2 with 18,756 square feet of lot area and no street frontage; Proposed Lot 3 with 43,644 square feet of lot area and 69.83 feet of street frontage. The existing buildings will remain and be on Proposed Lot 3. Said property is shown on Assessor Map 147 Lot 18 and lies within the General Residence A (GRA) and Historic Districts. (LU-21-23)

City Council Representative Moreau moved to consider Agenda Item IV. C and IV. D, seconded by Vice Chairman Clark. The motion passed unanimously.

SPEAKING TO THE APPLICATION

Mike Garrepy spoke to the application. This is a unique site with 2 acres on Middle St. It is bifurcated in part by the Historic District. They are not proposing to do anything to the existing 3-unit structure on Middle St. Beyond the Historic District there is a single-family dwelling with a 2-car garage. That is accessed via a shared driveway with the 3 unit building and off Chevrolet Ave. The proposal is to do a 3-lot subdivision. There will be duplexes on the two new lots and the remaining lot will have the existing structures. The easement plan includes an existing easement on Chevrolet Ave. It is a private way that is maintained by the City. Today it is partially located on two different properties. They will provide easements to the City for this parcel and the abutting parcel is amenable to provide one for the right of way. There is a shared easement for a shared driveway. The original proposal was a denser development. That was not well received by the neighbors. They worked with abutters to revise it and create a better plan. The existing structures will still have access off Middle St. and Chevrolet Ave. A variance was granted for the frontage. Each duplex will be 2,700 sf of living space per unit. They will have a shared drive off Chevrolet Ave. The drainage plan includes a small rain garden on one of the lots. They will tie into the drain system on Chevrolet Ave. This has gone through several iterations at TAC for the subdivision and site plan.

Ms. Begala questioned where the new driveway was compared to the exit from the Malt Exchange. Mr. Garrepy responded that the Malt Exchange exit was further down from this location. Ms. Begala requested clarification on the encroachment on this driveway. Mr. Garrepy responded that part of the end of the driveway slightly encroaches on the abutting property. They are going to make a slight adjustment at the entrance to avoid that. Ms. Begala questioned if the single-family home would continue to have access on Middle St. and Chevrolet Ave. Mr. Garrepy responded that the single-family home had access from Middle St. and a driveway off Chevrolet Ave for their 2-car garage. That will be maintained. Ms. Begala questioned if major trees would be eliminated as part of this project. Mr. Garrepy responded that there is one pine

tree in the middle of the existing drive that they will keep. Anything that is existing on the two lots will probably need to be removed. The site will be revegetated.

City Council Representative Moreau clarified that these would not be made condos. Mr. Garrepy confirmed that was correct. Only the existing properties will be condos.

Mr. Hewitt requested more information on the variances they have received. Mr. Garrepy responded that variances 1 and 3 went together. They asked for the second variance out of an abundance of caution because it is an existing condition. The ordinance requires that the frontage be on a City street and Chevrolet Ave. is not technically not a City street. They needed a variance to have frontage on a private way. One was to create the lot and the other was to build on the lot with access.

Mr. Samonas commented that they proposed the mailbox on Chevrolet Ave., but that may cause traffic congestion. Mr. Garrepy responded that location was suggested by DPW. Mr. Samonas suggested adding reflectors on that to make it more visible.

Vice Chairman Clark questioned how package deliveries would be made. Mr. Garrepy responded that the delivery van would pull into the driveway and then back out to head out. Vice Chairman questioned why they did 2 lots. Mr. Garrepy responded that they had to in order to put 4 dwellings on the lots without more variances.

Ms. Begala questioned who would bear the burden of the cost for milling and overlaying the street. Ms. Zendt responded that was a condition that the DPW requested be included and the applicants would bear that cost.

PUBLIC HEARING

Chairman Chellman 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 Clark moved to grant preliminary and final subdivision approval, seconded by City Council Representative Moreau with the following stipulations:

2.1 Milling and overlay of the full road width for length of the disturbance area shall be required and, the sidewalk shall be repaired or replaced (as needed and determined by the DPW).

2.2 Subject to DPW review and approval temporary pavement shall be required at time of construction. Such paving shall be to the existing pavement depth and, after a winter season the street shall receive a full mill and overlay.

2.3 Lot numbers as determined by the Assessor shall be added to the final plat.

2.4 Property monuments shall be set as required by the Department of Public Works prior to the filing of the plat.

2.5 GIS data shall be provided to the Department of Public Works in the form as required by the City.

2.6 The final plat and all easement deeds shall be recorded concurrently at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.

The motion passed unanimously.

- D.** The request of **Elizabeth B. Larsen Trust of 2012 (Owner)**, for property located at **668 Middle Street** requesting Site Plan Review approval for the construction of two two-unit structures and improvement to the existing structures to create a total of eight units on three lots with associated utilities, connections and site improvements. Said property is shown on Assessor Map 147 Lot 18 and lies within the Historic and General Residence A (GRA) Districts. (LU-21-23)

DISCUSSION AND DECISION OF THE BOARD

Vice Chairman Clark moved to grant Site Plan approval, seconded by Vice Chairman Moraeu with the following stipulations:

Conditions Precedent (to be completed prior to the issuance of a building permit):

2.1 Prior to the issuance of a building permit, three sets of condominium documents total shall be submitted to the City for review by the Legal Department.

2.2 The site plan, any off-site easements to benefit the development, and any other new private or public easements shall be recorded at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.

2.3 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:

2.4 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;

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

The motion passed unanimously.

- E.** The request of **4 Amigos LLC (Owner)**, for property located at **1400 Lafayette Road** and **951 Peverly Hill Road** requesting Preliminary and Final Subdivision approval to subdivide one existing lot with 223,416 square feet of lot area and 789.91 feet of frontage on Peverly Hill Road and 576.28 feet of frontage on Lafayette Road into two lots as follows: Proposed Lot 1 with 111,415 square feet of lot area and 467.63 feet of frontage on Peverly Hill Road, Proposed Lot 2 with 137,276 square feet of lot area with 325.59 feet of frontage on Peverly Hill Road and 576.28 feet of frontage on Lafayette Rd. Said property is located on Assessor Map 252 Lot 7 and lies within the Gateway Center (G2) District. (LU-22-80)

City Council Representative Moreau moved to consider agenda item IV. E and IV. F, seconded by Vice Chairman Clark. The motion passed unanimously.

SPEAKING TO THE APPLICATION

Chris Tymula spoke to the application. They are seeking approval for a 1-year extension, amendment to the site plan approval and a lot line consolidation. They previously received an extension in 2021. In order to receive any additional extensions, they need to go back to TAC and this Board. They scaled back the number of units, parking, building footprint, and building coverage. This project was started in 2020. Then the pandemic hit, and the market has changed. They eliminated the 4 story apartment complexes that were previously along Peverly Hill Rd. Now there are 3 story townhouse style units. They went from 53 to 32 units. The footprint has been reduced from 37,775 sf to 25,600 sf and the parking has been reduced from 106 spaces to 93 spaces. This proposal reduced the impervious by 3,900 sf. The previous application met all the conditions of approval. They kept the architecture designs. They are separating the commercial in the front from the residential component in the back. The subdivision plan separates the front portion of the site from the rear portion. The front lot will be 1400 Lafayette and the remaining will be consolidated to 951 Peverly Hill Rd. The project meets all the zoning requirements, and no variances are needed. They do need a waiver for the location of the dumpster. This was addressed in the TAC comments. The only outstanding item is note 2. They just need to confirm that with DPW. They also need to add a sprinkler room on the final building plans.

Vice Chairman Clark commented that the paved area on complex B looked a lot bigger and is not striped for parking. Mr. Tymula responded that each one of the units has a 2-car garage. They wanted to provide more room to allow for parking in front of it. They eliminated the U-shaped building which eliminated some of the impervious coverage. They did add more parking in that area but overall, there is a reduction in impervious. Vice Chairman Clark questioned if the applicant looked to change the seating area in between building A and B into an actual playground. That could be a good addition to the site. Mr. Tymula responded that they looked at putting in a playground on the development during initial discussions with Staff but moved away from that. They will have an outside patio area and added bike racks on the site too.

Mr. Hewitt questioned if the pedestrian improvements along Peverly Hill Rd. changed at all. Mr. Tymula responded that there was no change. They are still providing an RRFB and crosswalk. There is also a design included for an additional sidewalk on the west side of Peverly Hill Rd. If the City wants to move forward on that, then they can use that to build it.

Ms. Begala clarified that there would be 2 entrances off Peverly Hill Rd. and one on Lafayette Rd. Mr. Tymula confirmed that was correct. Ms. Begala questioned what side the west side of Peverly Hill Rd. was. Mr. Tymula responded that was along the Market Basket side. The crosswalk and flashing beacons will get pedestrians to the other side where the existing sidewalk is on West Rd. They included a design for a sidewalk on the west side but did not include it in the plans because they would need to get easements to complete it. Ms. Begala questioned if

they did a trip generation or traffic analysis for this site. Mr. Tymula confirmed that was done. There was some discussion about whether or not they should put the crosswalk closer to the intersection, but from a traffic safety perspective it did not make sense. They will have less traffic now because there has been a reduction in units. It is consistent with the original approvals. Ms. Begala questioned if they discussed the idea of putting in a sidewalk along the side of their development. Mr. Tymula responded that they were proposing a 10-foot-wide sidewalk that will connect to the sidewalk on Five Guys.

PUBLIC HEARING

Chairman Chellman 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 Clark moved to grant Preliminary and Final Subdivision approval, seconded by City Council Representative Moreau with the following stipulations:

- 2.1 Lot numbers as determined by the Assessor shall be added to the final plat.
- 2.2 Property monuments shall be set as required by the Department of Public Works prior to the filing of the plat.
- 2.3 GIS data shall be provided to the Department of Public Works in the form as required by the City.
- 2.4 The final plat and all easement deeds shall be recorded concurrently at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.

Vice Chairman Clark commented that all in all this was similar to what the Board saw in 2020. The subdivision is just a technicality.

The motion passed unanimously.

- F. The request of **4 Amigos LLC (Owner)**, for property located at **1400 Lafayette Road** and **951 Peverly Hill Road** requesting an amendment and a 1-year extension for the previously approved Site Plan and Conditional Use Permit for a Development Site according to the requirements of Section 10.5B40 of the Zoning Ordinance and Site Plan Review approval for the construction of a 53-unit Garden and Townhouse Style residential development consisting of 6 structures with a combined total footprint of 37,775 +/- s.f. and 122,000 +/- GFA with associated grading, lighting, utilities, stormwater management, landscape improvements and community space. Said property is located on Assessor Map 252 Lots 4, 5, and 7 and lies within the Gateway Center (G2) District. (LU-20-12)

DISCUSSION AND DECISION OF THE BOARD

Vice Chairman Clark moved to grant waiver to section 9.3.5 of the Zoning Ordinance to allow the dumpster to be located within 20 feet of the property line, seconded by City Council Representative Moreau.

The motion passed unanimously.

Vice Chairman Clark moved to grant a 1-year extension of the Site Plan and Conditional Use Permit approval with presented amendments and all original conditions (as approved on April 30, 2020 under LU-20-12), seconded by City Council Representative Moreau in addition to the following stipulations:

Conditions Precedent (to be completed prior to the issuance of a building permit):

2.1 The sprinkler and riser room will be included in the building plans and will be incorporated within the existing footprint.

2.2 The site plan, any new off-site easements to benefit the development, and any other new public or private easements shall be recorded at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.

2.3 Summary narrative describing the general location and purpose of the easement.

2.4 A location map identifying the general location of the easement.

2.5 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:

2.6 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;

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

Vice Chairman Clark commented that this is a better development than what they originally saw. Before it was very dense. Some of the community space is just landscaped areas. They are not a big benefit to the community. Overall, it is a better project. City Council Representative Moreau agreed with Vice Chairman Clark. The community space is disappointing but there is more green space. It is a less dense development.

Ms. Begala agreed with the previous comments. There should be a lot of trees and shrubs put into this development to make it a high-quality living space. They should make it really good green space.

Mr. Hewitt made a general comment. When the site was rezoned to G2 the hope was that density bonuses would be granted for affordable housing. At the time they felt that residential homes on Route 1 would be more affordable. They reduced the number of units, but now they are larger condos. It's unfortunate more people not taking advantage of WFH density bonus.

The motion passed unanimously.

V. DESIGN REVIEW APPLICATION – PUBLIC HEARING

- A. The request of **EightKPH LLC (Owner)**, for property located at **161 Deer Street** to be known as **88 Maplewood Avenue** Design Review for the demolition of the existing one story commercial building and the construction of a four story building with a penthouse. Said property is shown on Assessor Map 125 Lot 17-3 and lies within the Character District 5 (CD5). (LUPD-22-7)

SPEAKING TO THE APPLICATION

John Chagnon from Ambit Engineering, Carla Goodnight and Tom Ballon spoke to the application. Mr. Chagnon commented that these were the same plans presented for the conceptual design meeting. The desire here is to get any additional feedback from the public before going into final design. The subdivision was approved to create 6 lots on Deer St. They obtained an easement from the railroad for additional space along the north side. They will be removing the existing building and construct a new larger building. It will have some underground parking.

Chairman Chellman questioned if there were any changes to the plan. Mr. Chagnon responded there was not. They wanted to get additional feedback and tracked the comments from last month.

Vice Chairman Clark questioned if they were going for an incentive to build the 58-foot building. Mr. Chagnon responded that they were contemplating a variance for the building height. They are still looking at the options. They pulled the basement level to be above the water table. They are also proposing higher floor to ceiling heights. They don't want to artificially raise the building, but they think this fits.

Mr. Samonas questioned if the delivery area on Maplewood Ave. would create a choke point. Mr. Chagnon responded that location right now is the entrance to the site. There is an existing collection of utility gear like a transformer in that area. They will be adding a transformer to that area. They need to maintain access for Eversource and are talking to the City about making it a delivery point. Mr. Samonas questioned where the trash area would be and how they would bring it out. Mr. Chagnon responded that the trash will be stored in the building with the underground parking. Putting trash in the basement is a good way to deal with it in urban environments. The space would be accessible and easily transferred to a smaller truck. The frequency of the pick-ups will match the demand.

Mr. Hewitt questioned if the plan was still to have 3 floors of residential space with 6 units per floor at 2,400 sf each. Mr. Chagnon confirmed that was correct. Mr. Hewitt questioned if there would be a penthouse on top. Mr. Chagnon confirmed there would be a penthouse and additional common area. There will be a total of 19 units.

Ms. Begala questioned if the penthouse made this a 4.5 story building or if it counted as a fifth story. Mr. Chagnon responded that the building is 4 stories with a penthouse. The ordinance defines it as a penthouse not a story. It allows for 4 stories and a penthouse. Ms. Begala

questioned if this originally had a trade off with workforce housing. Ms. Goodnight responded that the original approval had a 5-story building with a workforce housing component. This proposal is for a 4-story building with a penthouse that meets the ordinance. They are working with the Historic District Commission on the context and massing of the building. Ms. Begala requested more information on the concrete ramp on the Deer St. side. Ms. Goodnight responded that the civil engineer has drawn it in a very utilitarian way which the HDC will not approve. They will make it into an elevated brick plaza. It may go back into the building for a coffee area. It will be for pedestrians. Ms. Begala questioned if the fire truck access had been assessed for this site. Mr. Chagnon commented that the building will be sprinkled, so they won't have to go around the whole building. Ms. Zendt added that the Deputy Fire Chief sits on TAC, so that will be reviewed then.

Vice Chairman Clark commented that this proposal needs to work to activate the site. The first-floor commercial area should be engaging and encourage people to stop in. Ms. Goodnight responded that the raised area will potentially be covered to service more retail spaces. They are looking to create that interface. It will have a presence for the public.

Ms. Begala requested more information on the parking. Mr. Ballon responded that they were reducing it to 19 units and would have tandem parking to meet the requirements. Ms. Begala questioned if they would be garage level. Mr. Ballon confirmed that was correct. Chairman Chellman questioned if there would be 2 spaces per residential unit. Mr. Ballon confirmed that was correct. They were not required to provide parking for the commercial space.

Chairman Chellman questioned if there were concerns about ground water and contamination on the site and that was driving the height. Mr. Ballon responded that there were two issues. The contamination is not a concern because the majority of that was on lots 3 and 4. The main storm drain for all of Portsmouth runs across the front and down Deer St. There is a 20-foot easement out to North Mill Pond. DPW has told them that they cannot pump into that system because it is full. The originally proposed building would have needed to pump. The outfall pipe is halfway covered at high tide and completely covered during a storm surge. The new FEMA map shows the base flood elevation at 8 feet. This site has detention tanks to control the water. The existing ground water table is at 6 feet. The base flood elevation is 8 feet. It would be prudent to put the garage floor elevation at 8 feet to prevent pumping. That puts the upper floor at 18 feet. That would make the elevated patio at 3 feet above the curb on one end and 6 feet on the other. It will create a floating patio above the parked car line. The parking garage has to be 10 feet high to accommodate an ADA van.

Chairman Chellman questioned if the geo tech report for DSA was across the site. Mr. Ballon responded that they did 40 borings across the whole site. Chairman Chellman noted that there were some serious technical questions. There are a lot of ways to address it. The Planning Board should request that TAC require a third-party engineer review.

Mr. Hewitt commented that they allow parking below flood elevations. Chairman Chellman confirmed that was correct. Mr. Hewitt agreed they should have an engineer review it. Chairman Chellman commented that the pipe has been studied in the past. Mr. Chagnon

confirmed that there was a study, but they have not seen the results of that study. Chairman Chellman commented that could be a starting point.

Chairman Chellman commented that they have seen other projects with an underground retention gallery under the whole building. There are options that could be considered. 46 Maplewood has parking below the ground water table. Mr. Chagnon responded that garage is lower. The geo tech report identified a different water table on that lot.

PUBLIC HEARING

Chairman Chellman 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 Clark moved to find the design review process was complete, seconded by City Council Representative Moreau with the following recommendation:

1.1 During the Technical Advisory Committee review, the Committee consult with a 3rd party to review the geotechnical study and drainage analysis or perform a new study if needed.

Mr. Harris commented that he appreciated the additional information about the water table. Storm events have been significant in the past and that should be considered as part of that review. Chairman Chellman noted that historic events are not necessarily part of the design criteria.

The motion passed unanimously.

VI. CITY COUNCIL REFERRALS

City Council Representative Moreau moved to take Agenda Item VI. B out first, seconded by Vice Chairman Clark. The motion passed unanimously.

- A.** Hold a Public Hearing and consider a recommendation to the City Council for Zoning Ordinance Amendments to Building Height standards.

SPEAKING TO THE APPLICATION

The Planning Board agreed to go past 10 pm.

Nick Cracknell from the Planning Department provided an overview of the updated amendments. Phase 1 is amendments to the building height standards. The goal is to provide consistency across the Character Districts, remove typos, and clarify intentions on lots where there are cuts and fills. The building height map is street based. Buildings are taller in the Cd-5 and CD-4 districts and lower in the CD-4-L1 and L2 districts. The updates will clarify the building height standards on corner lots, through lots, and waterfront lots. They will also add developmental controls for civic and municipal properties. They will address grading and how

the building height is measured. Right now, municipal and civic properties don't have a building height standard around them. Adding them will provide better readability and comparison for when they have project proposals. The update will add in new streets like Foundry Place. It will also adjust the building height on High St. and Haven Court. The proposed changes to the building height map will address gaps in the height standards. They are not changing the incentive overlay district. People can still provide incentives to get 10 more feet or one extra story. There are buildings currently approved lot 3 and 6 from Deer Street Associates. Both have active permits. They are vested in the City's opinion. Hill St. is on the back of lot 6. Hill St. It was made deliberately brown when the Character Districts were adopted. They wanted to make sure Foundry had the building height then take another pass on what makes sense for the surrounding neighborhoods. The hotel on lot 3 already uses the brown line and lot 6 is on a brown line as well. They are allowed 2-4 stories in the overlay. They are intended to be taller buildings to create an urban neighborhood along Foundry Place. The proposed change is to move it from brown 50 feet to green 40 feet tall. Developers can get an additional 10 feet for either. The community has not weighed in on what they would like to see in this corridor yet. This proposal is just stepping down 10 feet along Hill St. High St. and Haven Court are existing conditions. The parking garage is 45 feet on Haven Court. The existing building heights are an example of where more thought could have gone into this area. There are a lot of 3 stories with short 4th. The short 4th floor is no taller than 80% of floor below it. Right now, an applicant is trying to link internal buildings, so they need 45 feet to match them all up. It's not about the style of the building it's about the scale. HDC will determine what the building looks like. This is purely about whether they add 5 feet to the area to match that. They are proposing to do that. It is only a 5-foot increase.

Ms. Begala questioned if the garage was 4 stories. Mr. Cracknell confirmed it was. The garage exists today and is grandfathered. Ms. Begala questioned if the property was squeezed between 45 feet and 40 feet. Mr. Cracknell responded that the property was surrounded by 45 feet tall buildings and there were some lower buildings in the area. There is no discernable difference between 40 feet and 45 feet from the ground. It's how they finish the top of the building and the ground floor that will have the biggest impact on the pedestrians. Pedestrians will not see over the building if it is more than one story. Mr. Cracknell did not think a 5-foot addition was worth a lot of discussion. The building design will be critical and that is in the HDC's hands. Ms. Begala questioned what it meant when they said they tested the view corridor. Ms. Begala questioned if it meant they looked at different heights of the building that went back to the garage and noted that the view corridor couldn't be improved. Mr. Cracknell responded that he did not say it that way but that is the conclusion. Two stories are the minimum height in that area. If a pedestrian is in a 20-foot corridor, then they will not be able to see over the building. Right now, they are allowed to have 3.5 stories. A 40-foot building is allowed by right and they can have 45 feet at a pitched roof. Chairman Chellman agreed that from a pedestrian perspective there was no change. They have a deflected view of the North Church. The change is to make it consistent with the other side of High St.

Mr. Cracknell commented that municipal and civic properties aren't defined now. They are simply proposing to fill in the gaps and make them consistent with the surrounding context. There is a typo that needs to be corrected in the incentive overlay.

Mr. Cracknell commented that they were also trying to make it clear to the reader that the HDC has jurisdiction over the maximum building height in the Historic District. Just because the ordinance says they can build 50-60 feet does not mean that the HDC will authorize that if it doesn't fit in the context of the neighborhood. It won't be less than the lowest, but it may not be the maximum. There's been an internal debate over the code with the merging of the Congress St. lots. They are proposing to make sure the building height standard along the front lot line of the street shall apply to the portion of the lot for 50 feet. If a building is on a street with a 50 feet and 40 feet building height, then the building can only step up to the higher height 50 feet into the lot. That will protect the lower building heights.

Vice Chairman Clark noted that they discussed setting the limit at 25 feet. Mr. Cracknell responded that they were sticking with 50 feet for now.

Mr. Cracknell commented that part 3 of the proposed changes was to apply dimensional standards to civic properties. That will create setbacks and footprints. It doesn't have all the dimensional controls, but it will allow owners of civic properties to make alterations and additions. This would just add dimensional controls for height and setbacks. They are also proposing an update to measuring the building height to deal with back filling. Today developers are building a first story on the ground level and back filling to make it a basement. That makes the buildings taller than intended. Today they are all as of right heights. The remedy will be changing the measuring from the finished grade to measuring from the existing grade. There was a question about how they would handle it if there was a cut instead of a fill. They will measure from the existing grade or the finished grade, whichever is lower. Mr. Cracknell clarified that when there was a hip top mansard roof, then it won't be measured to the top of the roof. It is measured to the midpoints. A flat top is measured at the top. Today a parapet wall can only be 2 feet higher than the roof. That height does not allow a developer to articulate the building well. They cannot create something with a grand entrance without a variance. It would be good to allow for more.

Mr. Samonas questioned if the City utilized shadow or massing studies to determine the height maps. Mr. Cracknell responded that they did not. They use shadow studies to review new buildings but did not use it in 2015 to develop the map. They want to use shadow studies when people want to build something. There is no point in doing one on something that exists. Mr. Samonas commented that they wanted to make the pedestrian alleyways attractive for pedestrians to use all day. A shadow study would show if 5 feet makes a difference. Mr. Cracknell responded that they do have the tool and use it. Chairman Chellman questioned if it was hard to create a 3D massing. Mr. Cracknell responded that it was not. DPW does it with the graphics file they get from developers. The Planning Department and HDC needs to be more diligent in asking for it earlier in the process.

Chairman Chellman commented that they got a lot of information tonight and it would be good to have some time to digest that. Mr. Cracknell agreed. There was no urgency on this item, so people can take time to review this.

Vice Chairman Clark questioned if the height measurements were for a flat plain or if it accounted for a curved surface as well. Mr. Cracknell responded that even then it would still be

a flat plain because they measure every 5 feet around the building to get the average plain. Chairman Chellman noted that they would need to discuss that more at a different time because that was not entirely accurate.

Ms. Begala questioned what the purpose and rationale behind this change was. They are only looking at certain proposed areas of building height instead of the whole City. City Council Representative Moreau responded that the Land Use Committee came up with 3 different phases of zoning categories and are looking at them at different times. This is the code clean up and unintended consequences clean up. They are working to clarify definitions to prevent people from interpreting the ordinance in a different way than they intended for them to. They want to make sure that they properly define the grades and measurements to make sure it is properly handled. During the other phases, they will look at more throughout the year. Ms. Begala commented that they should be looking at what the City is getting from these developments when they choose an incentive to get an extra story. Mr. Cracknell responded that he did a presentation on this topic to the past City Council in November and can forward that to Ms. Begala. City Council Representative Moreau added that the Land Use Committee was planning to look at the incentives in phase 3. Mr. Cracknell commented that the only substantive changes were the map change on Hill St., High St. and Haven Court, changing how they are calculating the building height, and the parapet. Everything else is minor clean up.

Mr. Mahanna commented that the agenda says that this is a public hearing with the intention to recommend this to City Council. This is not ready to go to City Council yet.

PUBLIC HEARING

Kim Rogers, manager of Foundry Place LLC and DSA commented that they just heard about this zoning change but thought it was further along than it is. They put together a letter addressing their concerns. They currently have a development with site plan approval and a permit. Changes in zoning on Hill St. can impact that. The garage is a fairly imposing structure. It lights up the neighborhood pretty well from the roof of the garage. They looked at this in a 2015 charrette and analyzed the area. The thought was to build something that helps screen the neighborhood from the garage. The 4-story proposed building would step down to the four-plexes. Hill St. should stay brown. It doesn't make sense to have to step the building at this point. They are also measuring the height in the resilient flood plain area. If a developer is building in the resilient flood plain area, then the City should not discourage them from raising the grades up. That is something that should be considered. They could add an exception for properties in the flood plain area.

Tom Ballon of 233 Vaughn St. commented that he would like to see the penthouse allowed in 4-6-foot range. Also there could be a conflict if the BOA grants a variance for height because then the HDC would not have the power to revoke that variance.

Robin Husselage of 27 Rock St. commented that this was a neighborhood with mostly 2 story homes. Many of them are single family homes. The four-plexes are 2.5 stories. Ms. Husselage was in favor of the change in height on Hill St. A 50-foot building does not belong across the street from 2 story homes. Also, the Overlay District should be removed from Islington Creek

Neighborhood. This neighborhood already struggles with parking. They don't need a large footprint building with reduced parking allowances. This overlay will incentivize the demolition of homes and addition of new larger buildings. The neighborhood will change

Chairman Chellman 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. Cracknell clarified that the overlay district stopped at the Heineman Building. It does not go into the Islington Creek Neighborhood. There are no single-family homes in the overlay district. A parapet does not have anything to do with a penthouse. They are uninhabitable places that add interest to a building. When looking at Hill St. they made the assumption that those projects have building permits and are fully vested. If they have a vested project, then this has no impact unless they decide to redesign the project. Hill St. wasn't 50 feet plus the 10 to screen garage. They are trying to build a vibrant urban neighborhood on Foundry Place. Their building is not the same height as the parking garage.

City Council Representative Moreau suggested that they continue the review to next month's meeting and reopen the public hearing because there were a lot of additions and last-minute changes. That will give time for them to take additional public feedback and time for the Board to review this further.

Mr. Mahanna commented that the motion for this should be to table actions until there was 3D modeling and aerial photos to help the Board envision and prepare for the changes.

Mr. Mahanna commented that he found the modeling tool on the City's web site. It was useful to evaluate some of the City, but it doesn't include the new garage area. The Board should be able to review that. This is all good work and good clean up but all the aerial photos were one dimensional drawings. They are contemplating actual changes. There is a conflict in trying to give Mark McNabb a gift of 5 feet when he has a pending application for a project on that spot. It is his job to ask for 5 feet not the City's job to give it to him. They need more time to work on this.

Chairman Chellman commented that he would hesitate to speak on a specific application. There is currently a difference of opinion on that with the landowner and Staff. That is still a pending disagreement. Chairman Chellman questioned how much of a burden to Staff the motion's request would be. Mr. Cracknell responded that the proposed substantive changes for building height are only for Hill St., Haven Court, and High St. They can get the proposed building from the applicant and upload that into the model for Haven Court and High St. Hill St. will be trickier because they only have what has been designed by a third party. They can show the Board the building Kim Rogers talked about. It will not comply, but it will be close. Mr. Mahanna commented that making substantial changes to height allowances should not go in with clean up. Mr. Mahanna added that he would also like aerial photos of the City, like from Google

Maps, with the height allowance lines on them. Instead of a black and white street with the lines. Mr. Cracknell confirmed they could do that.

Ms. Begala questioned if they were just capturing what already existed for civic buildings. Ms. Begala questioned how they determined how many stories churches were. Mr. Cracknell responded that those changes were less for building height and more for dimensional controls. They are already non-conforming.

City Council Representative Moreau moved to continue considerations of the zoning amendments to the June 16, 2022, regularly scheduled Planning Board meeting, seconded by City Manager Conard.

The motion passed unanimously.

Mr. Mahanna to request staff provide additional information including aerial imagery, any available three-dimensional modeling related to affected buildings, and additional review of the definition changes, seconded by Ms. Begala

The motion passed unanimously.

- B. Consider a recommendation to City Council for an application from Sherilyn Burnett Young of Rath Young, and Pignatelli on behalf of the applicant Margot Thompson and Edward Thompson to request that the Portsmouth City Council apply for an Urbanized Shoreland Exemption pursuant to RSA 483-B:12 for the property located at 57 Salter Street, Tax Map 102, Lot 32 in the City of Portsmouth, located along the shores of the Piscataqua River.**

SPEAKING TO THE APPLICATION

James Steinkrauss from Rath, Young, Pignatelli represented Margot and Edward Thompson and spoke to the application. They are asking for an urbanized shoreland exemption. In April of this year, they requested an urbanized shoreland exemption from the City Council and they referred it to the Planning Board. They have submitted the information requested by the Planning Department. It is unique because the exemption request has to come from the City. If granted it would exempt the property from some shoreland requirements. It would not have an impact on the water. They have made this request at the recommendation of DES. Ultimately it would allow the owners to use the building as a primary residence. They have been in the community for 40 years. The construction and renovation of this property is part of their retirement plan. If this is granted, then the Thompson's would need to relocate the building 5 feet back. That would remove it from the wetland protection act zone. Any further renovation and movement would need city permits. The City would apply for this request because urbanized conditions exist. Urbanization shows concentrated development found in cities and towns where there is intensive building for residential or commercial uses. It means that all vegetated barriers are depleted, the impervious is in excess of 50%, and there are 10 buildings per acre. This exemption would only apply to 57 Salter St. They submitted documents as part of the record that the City would submit to the State. They show the current and past building density, the utilities for the site. 57 Salter

St. has 2 condo units and the other properties in the area are historic buildings. They are dense small lots and largely single-family homes. There is no vegetated buffer. The impervious area for the parcel is over 50%. The Thompsons have worked to reduced it from 57% to 52%. This is in the waterfront district, and it is zoned to accommodate business dependent on the river. It was previously used for a mix of residential and commercial. Now it is residential. Both units are served by public utilities. There is no septic on the property. This is subject to zoning article 10 and review by HDC. It is in the flooding district zone, and which is under the Conservation Commission's jurisdiction. The application is supported by the abutting owners of unit 2. They are asking a favorable recommendation.

Vice Chairman Clark commented that there were two permits issued by DES in 2019 and 2020 for this work and questioned if the issue was that they did not identify as residential. Mr. Steinkrauss confirmed that was correct. There were references to making it a residence in the application but that was not caught by DES. They have caught it now and issued a letter to cease and desist. The appeal is stayed pending this application.

Mr. Hewitt questioned if this was only the second time this has been requested in Portsmouth. Mr. Steinkrauss responded that it would be the second time it was granted if it is allowed. 99 Bow St. had an exemption was granted in 2007. Mr. Hewitt questioned if the Conservation Commission had purview on this. Ms. Zendt responded that this was discussed with Staff and City Attorney. They did not need to come here. It could have only gone to City Council. It does not fall under their jurisdiction. The Council was interested in hearing what the Planning Board had to say. Staff believes that the applicant submitted this in good faith and have been transparent with the State. It may not have been discussed, but it was never concealed. They operated in good faith. It was a surprise to them when the State issued a cease and desist. It was Council's decision that the Planning Board should receive this.

Chairman Chellman questioned if they were proposing to move the building 5 feet back. Mr. Steinkrauss responded that would be part of settling the appeal. It would be in the agreement to relocate the building, so it is no longer over the water. The exemption would let them maintain a residence on the property. They would have to come back for the relocation.

Ms. Begala commented that she was struggling with this. Ms. Begala wanted to believe that this was done in good faith, but they don't seem to be downsizing. It was a boat repair house on the river with 600 sf of space. Ms. Begala questioned what the new square footage was. Mr. Steinkrauss responded that it was a downsize for his clients because they sold their other property. Ms. Begala questioned if they upsized the structure over time. Mr. Steinkrauss responded that the square footage of the property was 640 sf. It is two stories. Ms. Begala commented that it looked like they added a floor. Chairman Chellman commented that the Board was being asked to make a recommendation on the urban exemption for City Council. Ms. Begala questioned if the Conservation Commission could weigh in on this. It is in the flood plain that was established in 2005. In 2018 the structure was converted to a residential structure. Ms. Begala had a lot of questions about that. This should move back more than 5 feet. It should be moved 50 feet or 250 feet to be out of the buffer. The Conservation Commission would inform the decision about the urban exemption.

Mr. Steinkrauss commented that a flood plain analysis was performed and submitted in a permit application. It was reviewed by DES in July 2020. There were two separate permit applications one was in 2019 and the other in 2020. The request for an urbanized exemption requires them to present enough evidence for the City to support the application and move it on to the State for approval. They evaluate and make the recommendation. Ms. Begala clarified that they were requesting their support for the application. Mr. Steinkrauss confirmed that was correct but also the City needs to submit the application to the State. Ms. Begala commented that she had a lot of questions about this and was not in a position to make a recommendation. City Manager Conard clarified that DES was supportive of the City submitting the application to them. Mr. Steinkrauss responded that DES recommended that the City file the application for the exemption. After that they will settle the appeal and move the building back.

City Manager Conard moved to recommend the Portsmouth City Council submit the application for an Urbanized Shoreland Exemption pursuant to RSA 483-B:12 for the property located at 57 Salter Street, Tax Map 102, Lot 32 in the City of Portsmouth, located along the shores of the Piscataqua River. to rec city council submit application, seconded by City Council Representative Moreau.

Chairman Chellman commented that he has done a lot of work on Lake Winnepesaukee with boat houses that have a history of residential uses over the water. The State does not take it lightly. If there was anything untoward, then they would have discovered that.

Ms. Begala commented that she still did not understand why the house would only move back 5 feet. It is right on the bank of a river. Ms. Begala was concerned about liability for the City in supporting this application when this does is a flood plain area. Ms. Begala did not support this request.

The motion passed by an 8-1 vote. Ms. Begala opposed.

VII. OTHER BUSINESS

VIII. ADJOURNMENT

Mr. Mahanna moved to adjourn the meeting at 11:05 p.m., seconded by Vice Chairman Clark. The motion passed unanimously.

Respectfully submitted,

Becky Frey,
Secretary for the Planning Board