

**PLANNING BOARD  
PORTSMOUTH, NEW HAMPSHIRE**

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

**7:00 PM**

**March 16, 2023**

**MINUTES**

**MEMBERS PRESENT:** Rick Chellman, Chairman; Corey Clark, Vice Chair; Karen Conard, City Manager; Joseph Almeida, Facilities Manager; Assistant City Engineer; Beth Moreau, City Councilor; Peter Harris; James Hewitt, Members; Jayne Begala; Andrew Samonas, Alternate

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**ALSO PRESENT:** Peter Stith, Principal Planner

**MEMBERS ABSENT:** Greg Mahanna

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**REGULAR MEETING 7:00pm**

[5:50] The meeting began at 7:00pm.

**I. APPROVAL OF MINUTES**

- A. Approval of the February 16, 2023 Minutes
- B. Approval of the February 23, 2023 Minutes.

[6:15] Councilor Moreau made a motion to approve both minutes. City Manager Conard seconded the motion. The motion passed unanimously.

**II. DETERMINATIONS OF COMPLETENESS**

**SUBDIVISION REVIEW**

- A. **REQUEST TO POSTPONE** The request of **Frederick J. Bailey III & Joyce Nelson (Owners)**, and **Tuck Realty Corporation (Applicant)**, for properties located at **212, 214, and 216 Woodbury Avenue** requesting Preliminary and Final Subdivision Approval for a Lot Line Relocation to create the following lots: Proposed Lot 1 to be 60,025 square feet of lot area where 26,012 square feet are existing, Proposed Lot 2 to be 12,477 square feet of lot area where 29,571 square feet are existing, and Proposed Lot 3 to be 7,917 square feet of lot area where 24,836 square feet are existing. No changes in street frontage are proposed. Said

properties are located on Assessor Map 175 Lots 1, 2, and 3 and lie within the General Residence A (GRA) District. (LU-22-129) **REQUEST TO POSTPONE**

[6:54] Chairman Chellman noted that this applicant had requested to postpone.

[7:19] City Manager Conard made a motion to postpone the application until the April meeting. Councilor Moreau seconded the motion. The motion passed unanimously.

### **SITE PLAN REVIEW**

A. The request of **Lucky Thirteen Properties LLC (Owner)**, for property located at **147 Congress Street** requesting Site Plan review approval for a 700 square foot addition, front and rear canopies and associated offsite and onsite improvements. Said property is shown on Assessor Map 126 Lot 4 and lies within the Character District 5 (CD5) and Historic District. (LU-22-192)

B. The request of **Lucky Thirteen Properties LLC (Owner)**, for property located at **361 Islington Street** requesting Site Plan review approval for the redevelopment of the existing structure including a 695 square foot addition and a 73 square foot addition with associated site improvements including lighting, utilities, landscaping, and stormwater treatment/management. Said property is shown on Assessor Map 144 Lot 23 and lies within the Character District 4-L2 (CD-4-L2) and Historic District. (LU-22-195)

[9:19] Councilor Moreau made a motion to accept items A and B as complete for Site Plan Review. City Manager Conard seconded the motion. The motion passed unanimously.

C. **REQUEST TO POSTPONE** The request of **Frederick J. Bailey III & Joyce Nelson (Owners)**, and **Tuck Realty Corporation (Owner and Applicant)**, for properties located at **212 Woodbury Avenue** requesting Site Plan Approval for the construction of an eight-unit condominium development consisting of four (4) single living-unit structures, two (2) two-unit structures, 18 parking spaces where are 13 required, and associated stormwater, utility and site improvements with access to the development from Boyd Street. Said properties are located on Assessor Map 175 Lot 1 and lies within the General Residence A (GRA) District. (LU-22-129) **REQUEST TO POSTPONE**

[7:30] Chairman Chellman introduced Site Plan Review items A, B and C.

[9:44] Councilor Moreau made a motion to postpone item C until the April meeting. City Manager Conard seconded the motion. 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. **WITHDRAWN** The request of **Liberty Mutual Insurance Co. (Owner)**, for property located at **225 Borthwick Avenue** requesting a Wetland Conditional Use Permit under section 10.1017. This project proposes shoreline stabilization work for two existing ponds on site with erosion impacts. This project proposes stabilizing the slopes with an extensive native vegetation planting plan which will occur along the slope and enhance the vegetated buffer. Said property is shown on Assessor Map 240 Lot 1 and lies within the Office Research (OR) District. **WITHDRAWN** (LU-22-212)

### DISCUSSION AND DECISION OF THE BOARD

[9:57] Chairman Chellman introduced this application and noted that the applicant had withdrawn their application.

### 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 **Lucky Thirteen Properties LLC (Owner)**, for property located at **147 Congress Street** requesting Site Plan review approval for a 700 square foot addition, front and rear canopies and associated offsite and onsite improvements. Said property is shown on Assessor Map 126 Lot 4 and lies within the Character District 5 (CD5) and Historic District. (LU-22-192)

[10:17] Chairman Chellman introduced this application.

### SPEAKING TO THE APPLICATION

[10:59] Eric Weinrieb of Altus Engineering came to present this application along with owners Mike and Susan LaBrie, Sarah Howard and Rob Harbeson of Market Square Architects. Mr. Weinrieb gave a brief description of the building's history, recent approvals from the Historic District Commission, Technical Advisory Committee and Zoning Board of Adjustment, and went into the proposed changes. These changes included a small 700 s.f. single story addition with infill. There will be no new external utility services or parking spaces. The applicants are open to all of the nine staff recommendations except for items three and eight which were redundant and item four for which the requirement listed does not apply.

[14:11] Ms. Begala asked the applicant to further explain the statement included in the application that the project would revitalize the neighborhood.

Mr. Weinrieb responded that the existing health food store building is a 'tired' building that needed a renovation and new façade to help vitalize that area of the street.

[15:08] Ms. Begala followed up with a question about the color and trim of the proposed building.

Sarah Howard from Market Square Architects responded that the existing building's red bricks will be stained dark grey and the new addition will include a dark grey band at the bottom and glass portions by the storefront with some sections of the existing color.

[16:49] Ms. Begala asked about the plant container in the front of the building and what would be in it.

Ms. Howard responded that that was an existing tree owned by the City and would remain intact.

[17:19] Mr. Samonas noted that this would be a great opportunity for artwork on the side of the building if the HDC would allow it.

## **PUBLIC HEARING**

[17:53] Chairman Chellman opened the public hearing. He noted that everyone would have three minutes to speak in the first round and five minutes in the second round. No one spoke. The public hearing was closed.

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

[18:39] Vice Chair Clark made a motion to find that the Site Plan Application meets the requirements set forth in the Site Plan Regulations Section 2.9 Evaluation Criteria and adopt the findings of fact as presented. The motion was seconded by Councilor Moreau. The motion passed unanimously.

[18:55] Vice Chair Clark noted that it was a good reuse of the property and noted that he agreed with Mr. Samonas that it presented a good opportunity for public art as well but that is dealt with by someone else. This proposal would also help to activate that intersection.

[19:36] Vice Chair Clark made a motion to grant Site Plan Approval with the following conditions:

***Conditions to be satisfied subsequent to final approval of site plan but prior to the issuance of a building permit or the commencement of any site work or construction activity:***

2.1) The site plan, and any easement plans and deeds shall be recorded at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.

2.2) The applicant shall prepare a Construction Management and Mitigation Plan (CMMP) for review and approval by the City's Legal and Planning Departments.

2.3) The applicant shall agree to pay for the services of an oversight engineer, to be selected by the City, to monitor the construction of improvements within the public rights-of-way and on site.

2.4) Applicant will work with the Building Department to appropriately size and locate the grease trap.

2.5) DPW is to observe and approve that sewer and stormwater systems are separated properly.

2.6) An excavation permit will be needed for the construction of the sidewalk.

***Prior to the issuance of a Certificate of Occupancy or release of the bond:***

2.7) 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.

The motion was seconded by Councilor Moreau. The motion passed unanimously.

- B.** The request of **Lucky Thirteen Properties LLC (Owner)**, for property located at **361 Islington Street** requesting Site Plan review approval for the redevelopment of the existing structure including a 695 square foot addition and a 73 square foot addition with associated site improvements including lighting, utilities, landscaping, and stormwater treatment/management. A Conditional Use Permit approval in accordance with section 10.1112.14 of the Zoning Ordinance to allow twelve (12) parking spaces where 22 are required and a Conditional Use Permit in accordance with Section 10.440, Use 19.50 for an outdoor dining and drinking area as an accessory use. Said property is shown on Assessor Map 144 Lot 23 and lies within the Character District 4-L2 (CD-4-L2) and Historic District. (LU-22-95)

[20:32] Chairman Chellman introduced this application.

[21:32] Mr. Hewitt recused himself from deliberating on this application. Chairman Chellman announced that Mr. Samonas would be sitting in for Mr. Mahanna.

**SPEAKING TO THE APPLICATION**

[21:47] Eric Weinrieb of Altus Engineering, Robert Whiteamire (project architect), Derek Durbin (attorney), Jeff Dyer (facility operator), Sean Creeley (future owner) and Mike LaBrie (current owner) came to present this application. Mr. Weinrieb noted that they have been through the process for many different approvals for this site in the past and the new proposed use will be a bagel shop which will improve the vitality of the neighborhood. He noted the challenge of developing the site and the different issues that were impacted by the zoning that required variances and Historic District Commission approval. They are requesting conditional use permits approval for parking, outdoor dining and site plan review. Mr. Weinrieb continued to explain the proposed changes and new development.

[28:20] Mr. Weinrieb noted that there were five items in the staff memo, of which they agreed with all but one. He noted that the site disturbance is under 15,000 s.f. so they do not need to meet certain requirements.

[30:15] Mr. Weinrieb noted that after receiving comments from Eric Eby they would be updating their plans if approved in the back left corner to allow for better circulation.

[30:50] Ms. Begala noted that there was not a motion made to read all the conditional use permits together and thought that the site plan permit should be separated.

[31:34] Ms. Begala made a motion to discuss the site plan approval first. Mr. Harris seconded the motion. The motion passed unanimously.

[31:56] Mr. Dyer explained the primary intent of the future site as a bagel shop. He noted their interest in having certain operating hours that would not exceed night hours such as dinner times. They are contemplating staying open until 10pm two nights a week.

[33:41] Ms. Begala asked for clarification on the NHDES case that lists gas monitoring in the groundwater and wanted assurances that the site is clean and would continued to be monitored under a new owner. Mr. LaBrie responded that they have spent millions removing the contaminants and there is no longer any removal going on or remediation needed and they continue to monitor the site. He noted that over time the levels of contamination have declined, and the state oversees the monitoring and the file will eventually close if it continues to test the way that it has been. The Getty company will remain liable for this going forward, not any new owners.

[40:00] Chairman Chellman asked Mr. LaBrie if NHDES was aware of their current application to which he responded they were, with no conditions or stipulations given by NHDES. He also asked if NHDES had access to the site to which they do in order to continue monitoring.

[41:28] Vice Chair Clark asked if they had formulated a soil management plan with NHDES as they haul soil off-site during construction and excavation.

Mr. Dyer responded that they had talked to the environmental engineers responsible for monitoring the site who felt the site was safe. Mr. LaBrie noted that all the existing gas tanks had been removed and all contaminated soil was removed, with no extra hot soil found. The engineers testing the soils were satisfied with the levels of contaminants within the soil.

[43:48] Mr. Almeida asked if it was the responsible of Getty to dispose of contaminated soil if there was any found during the proposed construction. Mr. LaBrie responded that it would be the responsibility of the engineers working for NHDES to coordinate and remove any soils. Vice Chair Clark followed up with a question on whether the monitoring wells would remain to which Mr. Weinrieb responded that they would.

[45:17] Chairman Chellman asked if there were any plans for things such as wind erosion for soils stored on site. Mr. Weinrieb responded that they haven't heard from NHDES yet about that but they will be in contact with them with those types of suggestions and requirements.

[46:20] Councilor Moreau expressed concern for the turning radius in the back of the building with the proposed addition, noting that delivery trucks may have issues on site.

Mr. Weinrieb responded that delivery trucks would be coming in at off-peak hours and would come in on the northwest end of the site which will be in the back by the kitchen, providing space for small delivery vehicles to get through.

[48:35] Vice Chair Clark asked if they had planned to do any treatment of the stormwater before it tied into the City drain system. Mr. Weinrieb noted that there was no current treatment on the site but there would be pre-treatment with sub catchment basins but no on-site stormwater management or pre-treatment.

[49:32] Ms. Begala asked for clarification on the phrase lounge put on the plans. She would like to enforce the use of this site as a bagel shop and not allow anything allowing lots of noise and light or people drinking. She also wanted to know the number of lighting fixtures proposed for the site.

Mr. Weinrieb responded that it is not a lounge and that it was not a part of the application whatsoever but a misunderstanding. They would be having normal bakery operating hours with some days later but would abide by the noise ordinance. He also noted that there would be two pole lighting fixtures along with some building mounted lights in the back and some bollard lights as well with no spillover of lighting which meets the City regulations.

[53:17] Mr. Samonas inquired whether there would be bollards for the outdoor space underneath the canopy. He also asked about sight lines for the intersection and whether planter boxes would impact that. Additionally, he noted that the traffic pattern is bad at the White Heron Café and wanted clarification on how this site would be better in terms of traffic.

Mr. Whiteamire responded that there would be four pendant fixtures and some string lights underneath the canopy for lighting. The sight lines would to be impacted as there would be a three foot clearance. In terms of traffic, Mr. Weinrieb responded that the site was very visible which allows the parking lot to be very visual so that drivers can tell from afar whether or not there is parking which is what inhibits the parking at White Heron.

## **PUBLIC HEARING**

[58:17] Chairman Chellman opened the public hearing.

[58:43] Elizabeth Bratter of 159 McDonough Street and 342 Cabot Street came to speak and passed out handouts to the Board. She expressed her concern for the size of the trucks that would be turning onto the site and made references to the truck turning templates and retaining wall.

[1:02:31] Ms. Bratter spoke again regarding this site and noted that more parking was needed and a revision of the truck turning plan. The removal of the lounge and language of a lounge would benefit the site and offered examples of past noise complaints of other outdoor businesses in the area and suggestions for better uses of the space and seating and worried for the possible nuisance to neighbors at night.

[1:07:48] Attorney Derek Durbin wanted to clarify that the use of the site is clarified as a restaurant with an occupant load of up to 50 people and does not distinguish between a bagel shop or different restaurant types. They applied for a conditional use permit for up to 31 people in the outdoor areas.

[1:10:35] Bill Downy of 67 Bow Street addressed the environmental concerns previously brought up and noted that the group working on this application was working properly with NHDES on these issues and had extensive careers dealing with these environmental situations.

[1:11:35] Joe Adler of 37 Salem Street voiced his support for this project and noted that the project would be an improvement to the site and would allow more people to enjoy the neighborhood.

[1:12:24] Chairman Chellman closed the public hearing.

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

[1:12:35] Ms. Begala mentioned that the impact of the noise and lighting on the neighbors is concerning and would like to see the outdoor area reduced. She also felt there could be a better balance with more parking and less seating capacity.

[1:15:52] Vice Chair Clark made a motion to find that the Site Plan Application meets the requirements set forth in the Site Plan Regulations Section 2.9 Evaluation Criteria and adopt the findings of fact as presented. Councilor Moreau seconded the motion and asked that the lounge be relabeled as an open seating area and the lights be turned off 30 minutes after closing. These would be added to the second motion. Ms. Begala noted her disapproval of the parking provided and that the outdoor area under the canopy was too large and would impact the neighborhood negatively.

[1:27:40] The motion passed 7-1 with Ms. Begala opposed and Mr. Hewitt recused.

[1:27:54] Vice Chair Clark made a motion to grant Site Plan Approval with the following conditions:

### ***Conditions to be satisfied subsequent to final approval of site plan but prior to the issuance of a building permit or the commencement of any site work or construction activity:***

- 2.1) The site plan, and any easement plans and deeds shall be recorded at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.
- 2.2) The applicant shall prepare a Construction Management and Mitigation Plan (CMMP) for review and approval by the City's Legal and Planning Departments, which includes possible soil contamination for review and approval.
- 2.3) The applicant shall agree to pay for the services of an oversight engineer, to be selected by the City, to monitor the construction of improvements within the public rights-of-way and on site.
- 2.4) Any site development (new or redevelopment) resulting in 15,000 square feet or greater



ground disturbance will require the submittal of a Land Use Development Tracking Form through the Pollutant Tracking and Accounting Program (PTAP) online portal. For more information visit

<https://www.cityofportsmouth.com/publicworks/stormwater/ptap>

2.5) Update plan set to adjust curb behind the building per revised sketch dated 3/8/23.

2.6) Relabel the “Lounge” area on the plan to “canopy area”.

2.7) Ensure all outdoor lighting is turned off 30 minutes after closing.

The motion was seconded by Councilor Moreau. The motion passed 6-2 with Mr. Harris and Ms. Begala opposed and Mr. Hewitt recused.

### **PARKING CONDITIONAL USE PERMIT:**

#### **SPEAKING TO THE APPLICATION**

[1:29:45] Chairman Chellman introduced the Parking Conditional Use Permit request by the applicant.

[1:30:01] Mr. Weinrieb noted that the parking requirements for a restaurant are not based on the number of seats but the floor area of the restaurant. They are proposing 21 spaces along with multiple bicycle, motorcycle, and moped spots with encouraged pedestrian access.

[1:31:41] Mr. Durbin noted that a larger building was needed due to the intended bagel restaurant requiring more space. He also brought up the Master Plan and noted how there is language that discourages an overabundance of parking which could drive up property costs.

[1:34:18] Councilor Moreau asked where the applicant plans to park their employees. Mr. Weinrieb responded that the intent is to have employees use the parking garage.

[1:35:34] Ms. Begala noted her concern for having staff and/or customers park all the way at the garage and noted that there were no other close shared lots.

Mr. Weinrieb responded that it was not expected that customers would need or want to use the garage but that the area was a high turnover area and the spaces provided would be for customers wanting to use the building. There would also be ample cyclist and moped parking.

[1:38:10] Mr. Harris asked for confirmation on the number of spaces and the number of seats – noting that they are requesting up to 71 seats and have parking spaces for up to 12 cars, and noted his concern for not enough parking. Mr. Weinrieb noted that there is ample parking being presented for the site and that the Board had just previously approved a restaurant use that had no parking. Mr. Samonas also commented that there could be different demands with different types of restaurants in the proposed space. Mr. Almeida noted that providing parking was a balance and noted that some nearby restaurant uses have no parking spaces whatsoever.

#### **PUBLIC HEARING**

[1:44:44] Chairman Chellman opened the public hearing.

[1:44:55] Elizabeth Bratter of 159 McDonough Street and 342 Cabot Street compared this proposed application to White Heron and Dunkin Donuts in terms of parking and traffic congestion and noted that the 12 spaces provided would not be adequate.

[1:48:10] Karyn De Nicola of 198 Islington Street and 381 Cabot Street asked for clarification on whether there was no parking on Cabot Street on the west side and noted that it may be difficult to leave the lot on that street. She also noted her concern for possible noise if the establishment would stay open late.

[1:49:45] Ms. Bratter spoke again and noted the parking analysis and the history of parking trends on the handout that the Board should note.

[1:50:23] Joe Adler of 37 Salem Street noted that he was impressed that the applicant was able to find 12 spots for parking and asked those opposed to consider if they would rather see this space continue to be vacant compared to giving up a parking variance.

[1:51:14] Chairman Chellman closed the public hearing.

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

[1:51:50] Ms. Begala noted that the Board is responsible for all citizens of the City and not just those downtown that are able to easily walk or bike to these types of sites and that they needed to consider those that live outside of downtown who have to drive.

[1:55:00] Vice Chair Clark made a motion to find that the Conditional Use Permit application meets the criteria set forth in Section 10.11 12.14 and to adopt the findings of fact as presented. Councilor Moreau seconded the motion.

[2:00:19] Ms. Begala and Mr. Harris both noted their opposition to the number of proposed parking spaces and the residential surroundings of this particular location. Mr. Harris noted that there could be a compromise between the number of parking spaces and seating capacity.

[2:02:55] Mr. Almeida noted his surprise for their concern for the parking in the neighborhood and mentioned that this site is proposing some of the most parking spaces compared to other businesses in this neighborhood. Noting that there could even be a deal made for residents to use the lot for after hours parking.

[2:05:45] Chairman Chellman noted that those who will likely be the offenders of parking in the neighborhood will be the employees or business owners and was concerned about this. His suggestion was potentially having a stipulation if possible for avoiding this.

[2:07:45] Vice Chair Clark noted his confusion at the moped parking space and thought the best use for that space could be dedicated employee parking instead, especially during the winter months when it could be dead space. Chairman Chellman noted that they had just approved the

site plan which shows moped parking there. Mr. Samonas noted that the moped spot in the winter could be a great grab and go spot during those months. Mr. Almeida reminded the Board that there was a steeply discounted parking rate at the garages downtown for employees that could be utilized.

[2:11:32] The motion passed 6-2 with Ms. Begala and Mr. Harris voting against and Mr. Hewitt recused.

[2:12:08] Vice Chair Clark made a motion 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 with the following condition:

- 2.1) The applicant will work with the Planning Department to review the possible use of the moped spaces as a parking space during the off season.

Councilor Moreau seconded the motion. The motion passed 6-2 with Ms. Begala and Mr. Harris voting against and Mr. Hewitt recused.

### **OUTDOOR DINING CONDITIONAL USE PERMIT:**

[2:15:38] Chairman Chellman introduced this application.

### **SPEAKING TO THE APPLICATION**

[2:15:45] Attorney Durbin spoke to the conditional use permit for the requested outdoor seating which is designed to accommodate up to 31 people at one time, giving the applicant use of the outdoor space during nicer seasons. This is designed to draw people in from the local neighborhood and to act as a gathering space. Additionally, the HDC was in favor of keeping the outdoor canopy space while retaining certain elements of the prior aesthetic. Mr. Durbin noted that while the building can have an occupancy load of up to 50 people it could not actually fit that many, more than likely a number between 40 and 43 people. The outdoor seating option will allow for more flow of people and spread of seating. This space will also provide a buffer between pedestrians and cars with bollards and plantings.

[2:22:52] Vice Chair Clark asked how much of the roof would be removed.

Mr. Whiteamire responded that the canopy and the existing four columns will remain. The decking will be removed along the streetside of the canopy along with the decking by the bay to the east side which will allow for more sunlight into the space and greater space for plantings.

[2:24:57] Mr. Almeida noted that the amount of roof that was left was nice because it allowed for shade as well as rain protection.

[2:25:19] Ms. Begala asked if they could provide robust landscaping under the canopy so that there is greenspace in the community space to align with the Master Plan's vision.

Mr. Whiteamire noted that there is a landscape plan and that there is a strip of planting beds under the canopy that will be evergreen plants. There also exists a pretty extensive planting plan that shows the existing asphalt being transformed into greater greenspace.

[2:28:02] Ms. Begala asked if they would be willing to replace some or all of the patio with greenspace.

Mr. Whiteamire responded that they were already replacing a third of the patio space with greenspace.

[2:30:11] Vice Chair Clark asked if the previous boards and commissions that they had been to had required them to reduce the roof and put in more greenspace, or had that been a design from the beginning?

Mr. Whiteamire responded that it had been a design choice on their part to keep the history of the service station.

[2:31:16] Ms. Begala asked if they stood by their statement that there would be no noise impact to the neighborhood.

Mr. Durbin responded that they would.

## **PUBLIC HEARING**

[2:33:06] Chairman Chellman opened the public hearing.

[2:34:13] Elizabeth Bratter of 159 McDonough Street and 342 Cabot Street commented on the pergola design and noted how it would help with the noise control if designed properly. She noted that there is ample space for each person compared to the square footage and occupancy and again voiced her concern for noise, especially at night.

[2:37:08] Chairman Chellman closed the public hearing.

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

[2:37:20] Mr. Almeida asked for clarification on whether there was a request for outdoor music in the application. Chairman Chellman responded that it was not a part of the application. Mr. Stith noted that they do not regulate music through applications but there was a noise ordinance. City Manager Conard noted that it can sometimes be a stipulation or component of a liquor license review. There is a use for live entertainment or outdoor entertainment that can be regulated.

[2:38:35] Vice Chair Clark made a motion to find that the Conditional Use Permit application meets the criteria set forth in Section 10.243.20 and to adopt the findings of fact as presented. Councilor Moreau seconded the motion. The motion passed unanimously.

[2:40:33] Ms. Begala asked if the Planning Board could set a condition for a maximum occupancy for a canopied area and if it was possible to limit hours of operation on an outdoor area such as the one presented. Mr. Stith and Chairman Chellman agreed that the Board could.

[2:41:06] Ms. Begala requested that the CUP is acceptable only if those two conditions are stipulated – that a maximum of 31 occupants is made for the outdoor section and that there is a limit on hours of outdoor operation until 7:00pm.

[2:42:59] Councilor Moreau suggested that since the neighboring restaurants have operation limits until 8:00pm that they should extend that to this application as well.

[2:43:40] Vice Chair Clark made a motion to approve the conditional use permit as presented with the following condition:

2.1) The outdoor use shall not extend beyond 8 pm.

Councilor Moreau seconded the motion.

[2:46:29] Mr. Durbin asked the Board to consider reopening the public hearing just to consider the stipulation for restricting hours of operation and for the applicant to discuss it with the Board. Ms. Begala was against any reopening of the hearing for any discussion. Vice Chair Clark was in favor of keeping the motion as is due to the precedent set by other businesses with the same restriction on this street.

[2:48:05] The motion passed unanimously.

[2:48:20] Chair Chellman announced a ten-minute break.

[2:54:26] Chair Chellman brought the meeting back to order.

## **VI. OTHER BUSINESS**

### **A. 668 Middle Street – 1 year Extension Request**

[2:54:56] Councilor Moreau made a motion to approve the extension. The motion was seconded by Vice Chair Clark. The motion passed unanimously.

### **B. Chairman Updates and Discussion Items**

[2:55:08] Chairman Chellman announced that there was a workshop meeting scheduled for the next week to talk about the Master Plan. Many Board members were unaware of the meeting and noted that they would not be able to make it.

[2:56:38] Ms. Begala gave a brief update on her interests for the Master Plan and she made a motion for the Chairman to create an advisory committee for review and revision of the Master Plan for Portsmouth.

[2:58:10] Chairman Chellman inquired whether the Board wanted a subcommittee to work on the Master Plan or if the whole Board should work on it. Councilor Moreau felt as though the whole Board should be involved.

[3:00:25] Chairman Chellman announced that he will work with City staff to schedule times and availability of rooms for working on the Master Plan with the Board.

[3:01:21] Mr. Hewitt asked Mr. Stith if there was any update on the parking study for 132 Middle Street. Mr. Stith responded that it had not yet been provided and he would follow up with the applicant. Mr. Hewitt also inquired about the Lonza expansion that had been approved by the PDA and whether or not that would come before the Planning Board. Mr. Stith responded that there were minor amendments that went through the Pease Development Authority and were approved, if any additional changes are made they plan to come back through the Planning Board. A discussion ensued on the upcoming plans and what would come before the Board in the future.

## **VII. ADJOURNMENT**

[3:05:01] Chairman Chellman adjourned the meeting at 10:00 pm.

Respectfully submitted,

Kate Homet,  
Acting Secretary for the Planning Board