

**PLANNING BOARD
PORTSMOUTH, NEW HAMPSHIRE**

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

7:00 PM Public Hearings begin

March 21, 2024

MEMBERS PRESENT: Rick Chellman, Chair; Greg Mahanna, Vice Chair; Karen Conard, City Manager; Joseph Almeida, Facilities Manager; Beth Moreau, City Councilor; Members James Hewitt, Jayne Begala, Paul Giuliano; Andrew Samonas, Alternate, William Bowen, Alternate

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ALSO PRESENT: Peter Stith, Planning Manager

MEMBERS ABSENT: None

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Chair Chellman called the meeting to order at 7:00 p.m.

I. APPROVAL OF MINUTES

A. Approval of the February 15, 2024 meeting minutes.

*Mr. Almeida moved to **approve** the February 15 minutes as submitted, seconded by Vice-Chair Mahanna. The motion passed unanimously.*

B. Approval of the February 21, 2024 meeting minutes.

*The February 21 minutes were **approved** as amended.*

*Mr. Almeida moved to **approve** the February 21 minutes as amended, seconded by Vice-Chair Mahanna. The motion **passed** unanimously.*

A timestamp and more discussion was added to the middle paragraph on page 3 about solar panels.

C. Approval of the February 29, 2024 meeting minutes.

*Mr. Almeida moved to **approve** the February 29 minutes as submitted, seconded by Vice-Chair Mahanna. The motion passed unanimously.*

Ms. Begala then moved that the last item on the agenda regarding the discussion of the Master Plan be moved to the first item on the agenda. Mr. Hewitt seconded.

*The motion **failed** by a vote of 5-4, with Mr. Giuliano, Councilor Moreau, Mr. Almeida, Ms. Conard, and Chair Chellman voting in opposition.*

II. DETERMINATIONS OF COMPLETENESS

SITE PLAN REVIEW

- A.** The request of **Martingale LLC (Owner)**, for property located at **99 Bow Street** requesting site plan approval to allow the expansion of the existing deck to include expanded seating for the business as well as public access to the Piscataqua River. Said property is shown on Assessor Map 106 as Lot 54 and lies within the Character District 5 (CD5), Downtown Overlay, and Historic Districts. Said property is located on Assessor Map 106 Lot 54 and lies within the Character District 5(CD-5) and Downtown Overlay District.

*Vice-Chair Mahanna moved that the Board determine that Item A is complete according to the Site Plan Review Regulations (contingent on the granting of any required waivers under Section IV of the agenda) and to accept the application for consideration. Mr. Almeida seconded. The motion **passed** unanimously, with Mr. Samonas recused.*

III. PUBLIC HEARINGS – NEW BUSINESS

- A.** The request of **Public Service Company of NH (Owner)**, for property located at **300 Gosling Road** requesting a Wetland Conditional Use Permit according to Section 10.1017.60 for the removal of 0.6 miles of the existing T-13 Transmission Line and installation of a new 0.6-mile 34.5 kV Distribution Line to connect the new Portsmouth terminal. Additionally, the project requires the replacement of existing structures along the 3171 Transmission Line from 212 Ocean Road to 100 Borthwick Avenue and a second area off 300 Gosling Road from Schiller Substation to Resistance Substation. The proposed project requires approximately 256,869 sq. ft. of temporary wetland impact and 79,310 sq. ft. of temporary buffer impact in the uplands for access and work pad placement. Said property is located on Assessor Map 214 Lot 3 and lies within the Waterfront Industrial (WI) and Office Research (OR) Districts. (LU-24-2)

Ms. Begala recused herself from the petition.

SPEAKING TO THE PETITION

[Timestamp 15:10] Conor Madison of Geoenvironmental was present on behalf of the applicant, with applicant Kurt Nelson of Eversource Energy. Mr. Madison reviewed the petition and the multiple permits received.

[Timestamp 23:35] Mr. Hewitt asked how old the existing wooden poles were and how long the steel poles would last. Mr. Madison said the wood poles were over 50 years old and the steel ones would last 70-100 years. Mr. Bowen asked if they had a capacity limit. Mr. Madison said

the capacity would not change. Mr. Nelson said the poles were old and a certain section of distribution line was being replaced. Mr. Bowen asked if it could handle a 25 or 50 percent increase in requirement. Mr. Nelson said the engineers were constantly forecasting needs. Mr. Bowen asked if Eversource's strategic planning was shared with the City. Mr. Nelson said a lot of forecasting low need assessment was done through ISO New England and that Eversource could get in touch with the City about the forecast and long-range plans. He said he would provide the information to the Planning Department. Chair Chellman asked if different poles would be installed to increase the capacity, and Mr. Nelson said the design presented was the most robust they had. Mr. Samonas asked if the State of NH or Eversource took wildlife into consideration when doing the work. Mr. Nelson said they went through a vigorous review with the NH Fish and Game Department. Mr. Samonas asked if Eversource had an estimate of the total construction. Mr. Nelson said it was about a year, and it was further discussed.

Chair Chellman opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Rich Dipentima of 16 Dunlin Way asked if the north section of the proposal involved going behind Dunlin Way by the railroad tracks. Mr. Madison said it would end before Dunlin Way.

No one else spoke, and Chair Chellman closed the public hearing.

DECISION OF THE BOARD

*1) Councilor Moreau moved that the Board find that the Conditional Use Permit Application meets the requirements set forth in Section 10.1017.60 of the Ordinance and adopt the findings of fact as presented. Mr. Almeida seconded. The motion **passed** with all in favor.*

2.) Councilor Moreau moved that the Board grant the Conditional Use Permit with the following conditions:

2.1) Silt sock shall be used wherever practical.

2.2) Plans and documents need to require a mat cleaning process to remove invasive species. Prior to construction, a pole inspection shall be conducted to identify any other poles within the project area that might need to be replaced within two years of the date of inspection. This information shall be provided in a letter report to the Planning Department, including the locations of any such additional poles.

*Ms. Conard seconded. The motion **passed** with all in favor.*

Ms. Begala returned to her voting seat.

B. The request of **Suzanne Winslow Revocable Trust (Owner)**, for property located at **999 Islington Street** requesting 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 located on Assessor Map 171 Lot 15 and lies within the Character District 4-W (CD4-W). (LU-24-14)

SPEAKING TO THE PETITION

[Timestamp 33:56] John Edwards, owner of Behind the Plate restaurant, was present on behalf of the applicant. He said there was an existing small brick patio and that no further construction would be needed. He said they wanted three 6-top tables and two lounge-style four seat spaces and planter boxes. He said the patio would be closed in and everything would be kept ADA.

[Timestamp 36:11] Councilor Moreau asked if there was a plan to protect the meters in front of the building. Mr. Edwards said there were two steel poles in front of the meters and the patio would end at the line of the brick and there would be a planter box, so no one would be able to enter that grassy area. Councilor Moreau asked if the vestibule was the actual entrance. Mr. Edwards said a black rail would stop foot traffic from entering, and the patio would start from the left-hand side of the rail and work its way along the perimeter. Mr. Giuliano asked about the driveway entrance. Mr. Edwards said it was about 20 feet but not part of the space they would use. Mr. Giuliano asked if screening the utility meters would create a sight line challenge for the driveway. Mr. Almeida said it looked like a rope would be hung across a few bollards. Mr. Edwards agreed and said the planter would be three feet tall. Mr. Almeida asked if additional lighting would be needed and if there would be music over speakers outside. Mr. Edwards said they would have only bistro string lighting and no music but would have liquor service.

Chair Chellman opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Chair Chellman closed the public hearing.

DECISION OF THE BOARD

- 1) *Mr. Giuliano moved 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. Mr. Samonas seconded. The motion **passed** with all in favor.*
 - 2) *Mr. Giuliano moved to find that the Board approve the conditional use permit as presented. Mr. Samonas seconded. The motion **passed** with all in favor.*
- C. The request of **Rosemary L. Gardner Revocable Trust (Owner)**, for property located at **50 Odiorne Point Road** requesting an after the fact Wetland Conditional Use Permit in accordance with Section 10.1017 to come into compliance for a wetland violation for construction without permits of a 376 s.f. stone wall within a prime and tidal wetland buffer and within an inland wetland and wetland buffer and construction of a 776 s.f. stone swale to redirect stormwater into the salt marsh, and installation of 444 s.f. of crushed stone in the buffer. Said property is located on

Assessor Map 224 Lot 10-3 and lies within the Single Residence A (SRA) District.
(LU-24-7)

SPEAKING TO THE PETITION

[Timestamp 42:03] Environmental consultant Elizabeth Oliver was present on behalf of the applicant Jack Gardner, who was also present. Ms. Oliver said they were requesting an after-the-fact Conditional Use Permit to conduct activities on the property to restore impacts that were brought about by the property owner to manage stormwater runoff, which included the installation of a swale and the rebuilding of a section of stone wall at the base of the property. She said they proposed removing stone from the swale and replacing it with vegetation to improve water quality management and to lower the elevation of the stone wall to reconfigure it to make it more conforming. She further described the project and said the work would be done in the spring. She said there was a robust construction monitoring plan.

[Timestamp 44:57] Mr. Hewitt asked if it was voluntary. Ms. Oliver said there was a notification from the City and that NHDES was brought in because there were State wetland violations. She said they were coordinating the project with them and that NHDES approved it as is. She said the Conservation Commission recommendations were responded to in the updated plan. Ms. Begala asked if the total square footage of the impacted area was 4,572 square feet. Ms. Oliver said it was in terms of jurisdictional areas on the property. She said the inland wetland area was disturbed but the tidal area was not impacted. She said all wetland impacts were restricted to wetland POGW2, a forested wetland, and both culverts drained into the wetland on an abutting property, then came onto the Gardner property and were captured by the swale. Ms. Begala said in Table 2, the wetland buffer activity, there were several lines indicating the wetland area buffer 'to' be disturbed. Ms. Oliver said that was area to be disturbed because they would be impacting it to remove all the stone and aerate the soil to Restoration Area One, which was a sizeable area. She said it was impacted as a result of putting the rebuilt stone wall in.

[Timestamp 48:10] Ms. Begala asked what the impact of twelve years of progressive building of the stormwater drains and swales before the restoration impact would be. Ms. Oliver said they were keeping all impacts restricted to the areas that were previously impacted. Ms. Begala asked if there would be additional compensatory mitigation or if the applicant talked to the City about fines. Ms. Oliver said the square footage of area listed in the table was the size. She explained what the restoration areas were and those that had been impacted and said the square footage was one and the same. She said the NHDES did not say anything about fines and the City did not discuss payment of fines outside of the payments associated with applying for a Conditional Use Permit application. She said it was brought up as a potential by NHDES but was cited more as if the property owner was not willing to consider restoration. She said she assured them that an alternative solution was best. Councilor Moreau said the City required labels where there were wetlands. Ms. Oliver said there would be signage placed along the wetland boundary or along the boundary for the restoration area. Chair Chellman said it was a State statute that there was a per diem fine that could be instituted but it was a zoning violation. He asked how the application would be different if the owner hadn't done anything. Ms. Oliver said she might have sought upfront discussion with the City to find a further upstream solution and abutting parcel. She said

it was a stormwater issue brought about by the development that was discharging onto private property that then discharged onto the owner's property. She said the owner invited City personnel to his property but was advised to slow the velocity of water flow across his property and to hire an environmental consultant. She said the City official didn't go to the property until the owner rebuilt the wall. Chair Chellman asked if Ms. Oliver felt constrained in her proposed restoration of the site or was told to do the best she could. Ms. Oliver said she felt constrained and that she did the best she could. Vice-Chair Mahanna asked who visited the property in 2017. Ms. Oliver said Planning Director Peter Britz and a Public Works representative did. Mr. Hewitt asked if the drainage all came from the private development or if any came from private roads. Ms. Oliver said the four storm drains were just from the development road. Mr. Hewitt asked if there were any easements. Ms. Oliver said there was no easement on the property or the abutting one in regard to the culverts and that most of the impacts were not associated with the drainage.

Chair Chellman opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Jack Gardner of 50 Odiorne Point Road said he moved there in 2016 and saw water problems right away and he called Public Works, who said it would happen sometime and that he had to live with it. He said he put some stone in to keep the water in but there were still problems.. He said he didn't know it was in the wetlands and that his efforts with the swale didn't work and there was erosion. In 2017, he said Public Works went over and said it was the velocity of the water going through, and told him to put sticks around it. He said he called Public Works a few days later to ask for help and was told to submit a claim to the City's insurance company, but it was refused. He said he contacted a lawyer and was told not to get into a long fight with the City. He said his cost was \$100K, so he had been fined in a sense. He noted that no one said anything about the swale until 2022 when he had the stone wall built and the City said he needed a permit.

No one else spoke, and Chair Chellman closed the public hearing.

DECISION OF THE BOARD

- 1) *Mr. Giuliano moved to find that the Conditional Use Permit Application meets the requirements set forth in Section 10.1017.50 of the Ordinance and adopt the findings of fact as presented. Mr. Almeida seconded. The motion **passed** with all in favor.*
- 2.) *Mr. Giuliano moved to find that the Board grant the Conditional Use Permit as presented.*
 - 2.1) *The property owner considers abiding by NOFA standards for all landscaping activities.*
 - 2.2) *A simplified map will be created for use by future landscapers and property owners that clearly defines what areas can and cannot be mowed, along with what areas should not be maintained and/or manicured.*
 - 2.3) *In accordance with Section 10.1018.40 of the Zoning Ordinance, applicant shall install permanent wetland boundary markers. We suggest that these markers are*

placed along the 25' vegetative buffer at intervals of every 50' along the property. These must be installed prior to the start of any construction. These can be purchased through the City of Portsmouth Planning and Sustainability Department.

*Mr. Almeida seconded. The motion **passed** with all in favor.*

- D.** The request of **Jewell Court Properties LLC (Owner)**, for property located at **33 Jewell Court, Unit S1** requesting a Conditional Use Permit in accordance with Section 10.1112.14 to allow 205 parking spaces where 242 are required. Said property is located on Assessor Map 155 Lot 5-S1 and lies within the Character District 4-W (CD4-W) and Historic District. (LU-23-205)

SPEAKING TO THE PETITION

[Timestamp 1:10:08] Attorney Chris Mulligan was present on behalf of the applicant, along with Jessica Kaiser, the principal of Jewell Court Properties. Attorney Mulligan said the request for a Conditional Use Permit was related to parking on the site. He said the standalone building had a total of 205 parking spaces. He said Ms. Kaiser's unit was currently used as office space and that she wanted to convert a portion of it to event space. He said they established that they would otherwise need 242 spaces for the combined uses on the site, which would require a Conditional Use Permit. He said the proposal was to lease out the event space periodically over the year and that the users of the space would employ valet or shuttle parking services to mitigate the impact on the existing parking. He reviewed the criteria for the Conditional Use Permit.

[Timestamp 1:15:53] Mr. Almeida said he was in support, noting that trolleys would bring wedding parties in, but the bigger challenge would be managing where the trolleys would drop people off. Ms. Begala asked why a noise study was done. Attorney Mulligan said they received a special exception from the Board of Adjustment in February, and one of the criteria was that the proposed use does not have a negative impact affecting neighboring properties including vibration, noise, etc. so the noise study was done to address that element. Chair Chellman asked if the shuttles would be coming from hotels. Ms. Kaiser said Grace Limousine would pick up the guests at the hotels and bring them to the wedding site and then Jewell Court. Chair Chellman asked if there would be a peak period in the summer. Ms. Kaiser agreed but said there usually wasn't a high level of traffic in the west end any time of year. She said they conducted an audit to determine how many spaces were available on the weekend and that parking shared with the other users would be on a first-come first-serve basis. Mr. Bowen asked if there would be a bar or a band and tables to sit. Ms. Kaiser said there was no intention for outdoor entertainment.

Chair Chellman opened the public hearing.

SPEAKING IN OPPOSITION TO THE PETITION

Jim Bridge of Portsmouth said they already had overflow parking from nearby businesses daily and didn't believe there were 205 spaces available for the event because people in nearby condos leased spaces there. He said he didn't see a feasible use for the event space in that area.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one else spoke. There were no second-round speakers.

DECISION OF THE BOARD

*1) Councilor Moreau moved to find that the Conditional Use Permit Application meets the requirements set forth in Section 10.1112.14 of the Ordinance and adopt the findings of fact as presented. Mr. Samonas seconded. The motion **passed** by a vote of 8-1, with Ms. Begala voting against.*

2.) Councilor Moreau moved that the Board grant the Conditional Use Permit as presented. Ms. Conard seconded.

[Timestamp 1:23:25] There was further discussion. Councilor Moreau said everyone would contractually be obligated for rentals so that they're not using a lot of parking, and she said there was also an easement onto the CVS property. Mr. Samonas said the CVS choke point could use some awareness and adaptation to facilitate driving and proper directional signs. He said the applicant or neighbors could consider it and think about the flow of traffic for events or in general; he liked the proposal and thought it would bring some life to that side of town. Ms. Begala said a parking Conditional User Permit could be requested or the capacity could be reduced in that event space that would reduce how much parking was needed. Mr. Samonas said the Fire Department and Building Inspector had to review the capacity and overall allowance for people permitted, which was another governing restraint already built in.

*The motion **passed** by a vote of 8-1, with Ms. Begala voting against.*

- E.** The request of **Ash Chicooree (Owner)**, for property located at **90 FW Hartford Drive** requesting an after the fact Wetland Conditional Use Permit in accordance with Section 10.1017 for the unauthorized removal of 28 trees within the wetland and wetland buffer area. Said property is located on Assessor Map 269 Lot 45 and lies within the Single Residence B (SRB). (LU-23-142)

SPEAKING TO THE PETITION

[Timestamp 1:29:58] Andrea Chicooree was present on behalf of her husband, the applicant. She said the Conservation Commission worked with her and her husband in doing a restoration plan to replace the trees and a wetlands scientist look at the plan.

[Timestamp 1:31:15] Ms. Begala asked why 28 mature trees had to be removed. Ms. Chicooree said the trees in the back were dead or dying and giant limbs were falling. She said there were children in the area, so the trees were removed out of a safety concern. Mr. Samonas asked if the applicants did the work themselves. Ms. Chicooree said they hired a company. Chair Chellman asked how the applicant found out that was a violation. Ms. Chicooree said the City showed up and said they were in violation, so she and her husband stopped the work. Ms. Chicooree said she and her husband thought they were further back from the wetland. Ms. Begala asked how

many trees would be replanted and what sizes. Ms. Chicooree said they would plant maples, white pines, and blueberries ranging from 7 to 19 inches in diameter.

Chair Chellman opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Chair Chellman closed the public hearing.

DECISION OF THE BOARD

*1) Mr. Samonas moved that the Conditional Use Permit Application meets the requirements set forth in Section 10.1017.60 of the Ordinance and adopt the findings of fact as presented. Vice-Chair Mahanna seconded. The motion **passed** with all in favor.*

2.) Mr. Samonas moved that the Board grant the Conditional Use Permit with the following conditions:

2.1) A monitoring report for the first two years after planting will be required to be submitted annually to the Planning and Sustainability Department. The first report shall be submitted after the restoration work has been completed. This report will include an update on all plant health, growth, and establishment. Additionally, it should include invasive management techniques, methods for irrigation and information on routine maintenance practices. The report must demonstrate at least an 80% survival rate of new plantings after the first two years of monitoring, if not, then replanting will be required.

2.2) A visual barrier will be placed on the property to designate where the 'no mow' line starts and ends.

2.3) In accordance with Section 10.1018.40 of the Zoning Ordinance, applicant shall install permanent wetland boundary markers. We suggest that these markers are placed along the 25' vegetative buffer at intervals of every 50 feet. These must be installed prior to the start of any construction. These can be purchased through the City of Portsmouth Planning and Sustainability Department.

2.4) If the existing shed is found to be within the 100' wetland buffer, a separate after the fact Wetland Conditional Use Permit will have to be applied for.

2.5) Prior to the removal of any tree stumps within the wetland and/or wetland buffer, the applicant will need to apply for a separate wetland conditional use permit.

Ms. Conard seconded.

Ms. Begala recommended that the monitoring plan expanded from two years to four, given the small size of the trees, to demonstrate the 80 percent survival rate of the new plantings.

*Ms. Begala moved to **amend** the motion to revise Condition 2.1 from two years to four years. Mr. Hewitt seconded.*

[Timestamp 1:38:19] Mr. Giuliano said he was comfortable with the amendment but thought Condition 2.2 seemed excessive for the applicant. He asked at what point visual barriers would be put on every property near the wetlands boundary. Chair Chellman said there was a fines provision in the zoning ordinance and State statute, and instead of pursuing that route, he thought what was proposed in negotiations with the Conservation Commission and City Staff seemed like a good balance. Mr. Almeida said the plan had gone before the Conservation Commission and the applicant came forward with a plan that was still costly and difficult to implement, and he didn't feel that any further punishment was needed. Councilor Moreau said she was fine with the two-year plan. Ms. Begala said she was concerned about stabilizing the buffer.

*The amended motion **failed** by a vote of 2-7, with Mr. Samonas, Mr. Giuliano, Councilor Moreau, Mr. Almeida, Chair Chellman, Ms. Conard, and Vice-Chair Mahanna voting in opposition.*

Mr. Samonas said the experience for the owner and the neighbors was a learning curve as to where the wetland began. He recommended educating the tree companies in the area as to where the wetlands began. He said two years was fine and it was a community solution.

*The original motion **passed** with all in favor.*

- F. The request of **Martingale LLC (Owner)**, for property located at **99 Bow Street** requesting site plan approval to allow the expansion of the existing deck to include expanded seating for the business as well as public access to the Piscataqua River. Said property is shown on Assessor Map 106 as Lot 54 and lies within the Character District 5 (CD5), Downtown Overlay, and Historic Districts. Said property is located on Assessor Map 106 Lot 54 and lies within the Character District 5(CD-5) and Downtown Overlay District. (LU-24-21)

SPEAKING TO THE PETITION

[Timestamp 1:45:30] Project engineer John Chagnon was present on behalf of the applicant, with Attorney James Steinkrauss representing Martingale, project architect Richard Desjardins, and owner Mark McNabb. Mr. Chagnon reviewed the petition, noting that they wanted to add two docks to the east and west of the existing dock and that part of the plan was to create public space that would be open to the public. He said the HDC approved the plan in 2021 and the amended approval in 2022, the Planning Board approved it in 2021, and the NHDES wetland approval was obtained in 2022 after a procedural correction to the record. He said the project received a shoreland exemption and the Governors Council approved the project in November 2023. He said the project would time its activities to avoid impact to fish species. He noted that there were other approvals including the Harbormaster approval and local and State approvals.

[Timestamp 1:51:55] Chair Chellman asked where the boundary was. Mr. Chagnon said the property line ended at the mean high water lane but the jurisdiction line for permitting by the

NHDES was an extension of that line. Chair Chellman asked where the property line was with respect to the neighboring building. Mr. Chagnon said the line was adjacent to the 109-111 Bow Street façade as it came away from Bow Street, then there was a short section of building that turned away from the property line at the north. He said the deck was further down. Ms. Begala asked what proportion of the west deck would be of public benefit. Mr. Chagnon said the eastern deck was 890 square feet, which was expanding the restaurant use, and the western deck was 334 square feet for public use. Ms. Begala noted that there were several abutter letters objecting to the project for several reasons, including that it was a previously a different size. Mr. Chagnon said the deck used to be larger, and the deck's arc bump-out was also removed.

[Timestamp 1:56:28] Attorney Steinkrauss said the project went through an extensive public process and the proposed deck was over the State waters as previously approved in 2021. He said the wetlands permit was approved by NHDES in 2022. He said the abutter Ms. Sherman filed an individual appeal to the Wetlands Council in November 2022, which explained the delay in the building permit process, and that appeal was dismissed in August 2023 and the NHDES permit became final and the Governors Council approved it in 2023. He said there was a public process throughout. He said Ms. Sherman raised issues about trash, but the property was a mixed-use building and there were two other restaurants that generated trash. He said the Board found that the trash complaints were within the Board of Health's purview and the applicant worked with the City to mitigate any trash complaints. He noted that Ms. Sherman used her unit as an office and not a residential space and that she said the size of the deck was scaled back and there were plans to address the sea level rise issue. Ms. Begala asked if moving it 20 feet back would mitigate noise, noting that the larger deck would increase capacity. Attorney Steinkrauss said the capacity of the restaurant would not change and there would be between 250-270 restaurant seats. Mr. Hewitt asked if the applicant tried to resolve the Shermans' other issues. Attorney Steinkrauss said the use of the trucks was another complaint, but the trucks were on a public street and unloaded at other places. He said the trash was screened and maintained. He said he wasn't aware of any other complaints.

Chair Chellman opened the public hearing.

First Round Speakers

SPEAKING AGAINST THE PETITION

[Timestamp 2:03:14] Katy Sherman of 111 Bow Street said her entire building was against the proposal. She said she addressed the site plan review regulations and that there were grease traps that overflowed regularly and that they saw grease sprayed onto her building's AC compressors and into the river. She said the trash was pressed against her building, the trucks were in the no-parking zone and blocked traffic, and the expanded seating meant more noise. She said the Conservation Commission denied the proposal twice, and NHDES denied it at first but approved it due to the appeal. She said her unit could be residential so it did affect her commercial and residential space. She said the garbage caused rodents, odor and seepage and was constantly full.

Attorney Steinkrauss corrected the seating capacity and said it was really 322.

John Sherman of 111 Bow Street said the applicant was before the Board and didn't know how many seats they had in the restaurant or the square footage of what they were seeking approval for. He said it seemed like the project was getting rubber-stamped as the process continued. He said a plan to develop shore plan protection wasn't submitted but the applicant got a shoreland protection permit. He said the Conservation Commission approved the decks with a condition that no more expansion would be allowed, yet the applicant had returned to the Board three times to seek further expansion. He noted that the Conservation Commission denied it three times. He asked what conditions meant if they weren't honored. He said the applicant was supposed to keep the trash in an indoor room instead of the street. He said the appeal was dismissed for procedural reasons and that NHDES did not consider any subsequent arguments from him. He said the project would have a huge effect on the 111 Bow Street property values,

No one else spoke, and Chair Chellman called for second round speakers.

Second Round Speakers

[Timestamp 2:12:45] Attorney Steinkrauss said the permit was granted by NHDES, which had jurisdiction over the deck over State waters. He said the Conservation Commission did vote against it but that was advisory to the State's decision on the permit that granted the use of the deck and added seating. He said the appeal filed by Ms. Sherman was dismissed because she filed it on behalf of the entire condo association and wasn't authorized to. He said the permit became final after August 2023 and was approved by the Governors Council, and he didn't expect any more approvals before the Conservation Commission.

Mr. Chagnon corrected the record and said when the shoreland rules came into effect in 1983, the State created the Shoreland Protection Program, which was in addition with the program in place for the tidal buffer zone. He said it extended the reach of protection to 250 feet. He said they created the shoreline exemption for communities that were on bodies of water, so at the time, one could not cover more than 35 percent of the lot with impervious surface. He said communities on the edge of water bodies where it was very developed, and the development in the zone along the Piscataqua River could have 95 percent coverage of the lot, so the State allowed the communities to intercede and request that their towns be given an exemption to the shoreland rules. He said the City of Portsmouth decided that they would not approach it as a city, but if individual property owners wanted to ask for an exemption, that was the vehicle. He said it wasn't true that the City never had a plan. He said the City thought about it and decided not to do an overall exemption in the Waterfront Area zone.

Attorney Steinkrauss said the loading zone in front of the 99 Bow Street building included a lot of restaurants and there were extensive trash rooms in the basement and mezzanine level of the building as well as internal recycling containers. He said the outside trash location was approved and the trash generated from Martingale was much less than from Surf and the other restaurants. He said the 322 was required and limited by the fire code for occupancy for the restaurant, so that would not change and was presently the limit.

Mr. Sherman said the applicant was increasing the size of the restaurant significantly, and no matter who used the trash, it was going to be increased and wasn't warranted. He said the public would have no benefit from the deck, noting that the applicant testified previously that the space was used as a waiting area and that they also had patrons there, so it really wasn't public space. He said the applicant also made it clear that they had control over who accessed that public area. He asked that the Board not use the public access as a bootstrap to expand the scope of the deck.

No one else spoke, and Chair Chellman called for third round speakers.

Third Round Speakers

[Timestamp 2:21:06] Mr. Chagnon referred to the diagram and said the circular sites on the blue public deck were planters, not tables, and part of the public access was through the building via the elevator coming down from the street level. He said by doing that, the owner was committed to providing and keeping that access through the building, which was a public benefit.

Mr. Sherman said the owner was committing to let patrons of his restaurant use that space and that it was a space that he would use for his business at his discretion.

No one else spoke, and Chair Chellman closed the public hearing.

DECISION OF THE BOARD

*1) Councilor Moreau moved 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. Ms. Conard seconded. The motion **passed** with all in favor, with Mr. Samonas recused.*

2.) Councilor Moreau moved that the Board 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.

- a. Easements on the plan and instrument recorded at the registry shall depict the easement to run from Bow Street to and through the stairwell to be inclusive of the area depicted as the public deck in the McHenry plan A9 to include ADA access to run with the land.*

2.2 Any easement plans and deeds for which the City is a grantor or grantee shall be reviewed and approved by the Planning and Legal Departments prior to acceptance by the City Council.

2.3 Applicant is to do pre-site inspection and vibratory monitoring throughout the project to identify any impacts to for abutting properties.

2.4 Property owner will work with city staff to resolve trash issues through the Construction Management and Mitigation Plan (CMMP) process.

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

2.5 Proper signage shall be posted for public space to be consistent with the Board's request from the Street to the public space.

2.6 Deck to be built in its entirety including public space for this project to be considered complete.

2.7 Property owner is to be responsible for maintenance of the deck forever.

Mr. Almeida seconded.

[Timestamp 2:27:23] There was further discussion. Councilor Moreau said it was something the Board had approved before and if the trash issue wasn't working, then City Staff and the Health Inspector could ensure that it was the way it was originally approved and maintain it. She said the applicant wasn't allowed to increase the capacity of the restaurant, even though there might be more seating available. She said she saw no issue with approving the petition a second time, noting that there were other avenues for some of the ongoing issues. Mr. Almeida said he was sensitive to the high energy levels of downtown as far as noise, waste, and energy. He assured the abutters that the Board didn't take their comments lightly, and if the building owner was violating any rules, there were avenues to enforce it. Mr. Hewitt asked Mr. Stith if he could confirm that the Conservation Commission denied the application three times. Mr. Stith said he didn't know about three times but that he knew they recommended denial of the State permit the first time the deck went before them. Ms. Begala said the approval from the Conservation Commission was from 2021 and thought the Board should look at the configuration and the issues over the water. She said it was confusing to approve something where the capacity was 322 people and the business could shuffle those people around, so the Board didn't know the actual number of people approved to be on the new decks. She said there would be an increased noise impact in addition to truck traffic and that a balance had to be struck, and thought the trash should be contained inside and there should be more trash pickups. She said the Board didn't know the hours of operation, which was a concern because the decks were close to the residents. She suggested stipulating a condition about limited hours of operation and sending it back to the Conservation Commission to hear their opinion. Councilor Moreau said the Conservation Commission was not advisory to the Board in this specific application because it was only for site plan. Chair Chellman said it was an accessory use to a permitted use downtown and the applicant was allowed up to 500 seats as a matter of right in that zone, so if there was a small expansion to the deck because chairs were shuffling around, there was plenty of allowance. He said the Board looked at the prior condition in the proposed conditions, and access from Bow Street down to the space had to be dedicated in the form of an easement and shown on the plan and part of a recorded instrument, which would be covered. He agreed with Mr. Almeida that if

there were violations of specific regulations, there were avenues that related more to code and the Health Department. He said he was comfortable with what the Board approved before and with what was currently proposed.

DECISION OF THE BOARD

*The motion **passed** by a vote of 6-2, with Ms. Begala and Mr. Hewitt voting against and Mr. Samonas recused.*

- G.** The Planning Board will consider a recommendation to City Council to adopt amendments related to electric vehicles and associated support equipment and facilities by amending the following: Chapter 10 – Article 4 – ZONING DISTRICTS AND USE REGULATIONS, Section 10.0440, Table of Uses – Residential, Mixed Residential, Business and Industrial Districts, Article 8 – SUPPLEMENTAL USE STANDARDS, Section 10.811 Accessory Uses to Permitted Residential Uses and Section 10.843.30 Motor Vehicle Service Stations, Article 11 – SITE DEVELOPMENT STANDARDS, Section 10.1112.32 Parking Requirements for Nonresidential Uses, and Article 15 – DEFINITIONS, Section 10.1530 – Terms of General Applicability, of the Ordinances of the City of Portsmouth.

[Timestamp 2:49:10] Mr. Stith said a draft was voted on at the February 29 meeting to send to a public hearing after Legal reviewed it. He said he and Chair Chellman met with Legal and made some changes to make it more user friendly by adding a definition to EV Fueling Space 1, and anything greater than that would be a Fueling Space 2. He said those were not to be confused with Level 1, 2, and 3 chargers but was just to discern between what was customarily found in a residential house v. a commercial or mixed-use building with a higher electric service. He said they recommended the draft labeled 3-14 to City Council for first reading.

[Timestamp 2:50:45] Vice-Chair Mahanna said there was no problem with Levels 1 and 2 residential at the work session, but the Board had said Level 3 needed some restrictions. Mr. Stith said in the use tables, a motor vehicle or service station could have any type of charging level but that the principle use was charging, which would be Level 3. He said that changed from a special exception to a Conditional Use Permit. For accessory uses, he said they had a new EV Fueling Space 1 for a house and that was something permitted across the board. He said an EV Fueling Space 2 would be more like a Level 3. He said that had charging support equipment that uses greater than the regular electric service that would be found in a house. Mr. Almeida said the wording might be confusing and it was further discussed.. Vice-Chair Mahanna said commercial on the first floor and three floors of residential on the top with a Level 3 charger in the parking lot didn't work for him because he wouldn't want the noise and vibration within 50 feet of a residence. Chair Chellman said the Conditional Use Permit would cover that as a principal use because it would get into placement and noise. He said mixed-use zones might have those as conditional use as well. Councilor Moreau asked if the Board wanted to force an applicant to do a Conditional Use Permit for Levels One and Two. Vice-Chair Mahanna said it should be only for Level 3. Mr. Samonas said he wanted it to be clear so that people could

understand Levels 1, 2 and 3. Mr. Bowen said it was a proposal authorizing putting a Level 3 charger into areas where the Board was pushing toward having more housing. Chair Chellman opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Round One Speakers

[Timestamp 3:00:08] Tom Morgan of 39 Richards Avenue asked if the Board really wanted a generator in the EV charging ordinance. He said he had never seen an EV charger with a generator next to it. He noted that the City Council sent their proposal to the Planning Board for comment and addressed EV chargers in all 28 zoning districts but that there were only 24 mentioned. He asked if it was an oversight. Chair Chellman said he thought they were all included for residential and that it wasn't supposed to be interactive. Mr. Morgan said in 2013 the City created a problem for EV chargers because they put it under motor vehicle service stations, which he thought meant that the gas station and EV chargers were sort of the same and in the future the chargers would be installed in gas stations.

Round Two Speakers

Mr. Morgan continued his comment and said he didn't think EV chargers installed in gas stations was a good approach. He said part of the City's problems stemmed from that because gas stations were only allowed in four zoning districts, and the same restrictions should be placed on EV chargers. He said the Board was talking about battery swaps and convenience stores as well. He recommended that different rules be made for each disparate use. He said fire safety was also a concern because electric vehicles could catch on fire in an enclosed space like an underground parking garage. He said parking has also been an impediment to the installation of EV chargers. He said one of the most recent amendments was that EV Fueling Spaces 1 and 2 may count toward minimum parking requirements, and he asked if that meant the EV charger and the equipment may be given a free pass. He said the wording was ambiguous and the intent should be clarified. Mr. Almeida said he read it as the charging station counting as a parking space. Mr. Morgan asked about the equipment that went with it. Chair Chellman said transformers would take up parking spaces and could be placed somewhere else. Mr. Morgan said the chargers had to be near an electric service. Mr. Almeida said therefore it was eliminating parking spaces by default. Chair Chellman said some jurisdictions didn't allow for counting a parking spot for an EV vehicle as parking space, so the Board thought it would be more permissive to allow it. Mr. Morgan said forcing an applicant to expand a parking lot would be an expense, and he suggested that the language be adjusted so that the equipment could be exempt. Chair Chellman said it would therefore be a full exemption for all EV equipment and the parking spaces.

No one else spoke, and Chair Chellman closed the public hearing.

[Timestamp 3:08:59] Chair Chellman said there were now Level 4 chargers. He said the Legal Department suggested EV Fueling Spaces 1 and 2 but thought it could be A and B instead and that fueling space B would not be within 100 feet of a residence. Mr. Stith said that, from

between non-residential use and residential mixed-use districts, motor vehicle stations had to be 200 feet, so if it was a principal use it would have to be 200 feet from a lot containing a use separated from a residential or mixed-use district. Vice-Chair Mahanna said that was consistent with the ones he had seen. Chair Chellman asked about an accessory stand-alone in a parking lot or a residential project, and it was further discussed. Chair Chellman said he struggled with the distance requirement because there was no flexibility. He said he was leaning toward the approach of a Conditional Use Permit to mitigate the problem. Mr. Almeida said if the stations were public, then they were public to the internet, and he asked if there was any distinction between a charging station open to anyone v. a private one on a lot. Chair Chellman said a commercial use was open to the public. Mr. Giuliano said a business could do it for their employees. Chair Chellman said that would be an accessory use. Mr. Almeida said Home Depot could put a Level 3 charger in that was open for anyone to use any time of day, and if it was used at night, he asked if it would create other issues because it's a 24-hr period. Chair Chellman said that was when a Conditional Use Permit could be considered. It was further discussed.

DECISION OF THE BOARD

Councilor Moreau moved to recommend to City Council to hold first reading on the zoning amendments dated 3/14/24 with the following edits:

- 1) To change EV fueling space 1 and 2 to EV fueling space A and B; and*
- 2) To change Use 19.70 EV fueling space B as an accessory use from Permitted to Conditional Use Permit in the G1, G2, B, and CD4-W districts.*

*Mr. Almeida seconded. The motion **passed** with all in favor.*

IV. CITY COUNCIL REFERRALS

- A. Electric Vehicle Amendments (See Item G above)
- B. Home Occupation

Chair Chellman said a public hearing had to be scheduled on home occupation because it needed to be expanded. He said currently the proposed amendment was to allow two people to come to a home business, which he thought was too restrictive, especially for art classes. He said they had to consider whether it was adults, kids, hours, and so on. Councilor Moreau said the City Council discussed it and said it was due to staffing restrictions and that two people would be an interim fix, and if people wanted more than two, they could ask for a variance. Mr. Stith said the recommendation was to schedule a public hearing at the April 18 Planning Board meeting.

*Mr. Almeida moved that the Board recommend to City Council to schedule a public hearing at the April 18, 2024 meeting on the zoning amendments for home occupation. Mr. Giuliano seconded. The motion **passed** with all in favor.*

V. OTHER BUSINESS

- A. Chairman updates and discussion items

B. Board Discussion of Regulatory Amendments, Master Plan Scope & other matters

[Timestamp 3:25:48] Chair Chellman said a workshop was needed to discuss the Master Plan.

Ms. Begala moved that the Planning Board issue the Master Plan RFP to procure a qualified consultant to develop the current Master Plan and that it be issued by April 18. Mr. Hewitt seconded the motion.

[Timestamp 3:27:25] Ms. Begala said sending the Master Plan into another calendar would help the Board with applications, and she thought it was up to the Board to determine the next step for the Master Plan and the timeline. She asked that the Board distribute the final draft RFP to the Planning Board members who had not reviewed it and send the comments to the subcommittee to incorporate the comments and issue the RFP on April 15. Chair Chellman said the current plan was to start that process with consultants in June and July due to all the things going on in the City, including the Market Square Master Plan. He said he talked to a few consultants about timelines and felt that any consultant who was ready to do it as fast as Ms. Begala suggested was not one that he would recommend. It was further discussed. Vice-Chair Mahanna asked why the Board was looking at Market Square when it was optional and the City's Master Plan wasn't optional. Chair Chellman said it was because they had a Master Plan that wasn't out of date and the Market Square Master Plan was a separate project with no deadline or expiration date. He said the current Master Plan was serving its purpose, and although it needed to be updated, it wasn't an urgent matter. Ms. Begala said Portsmouth had seen unprecedented development in the last ten years and that an updated Master Plan was necessary for making strategic decisions about growth and development. Chair Chellman said the Board could approve the scope but didn't think it could legally issue the RFP. Mr. Stith described the process. Chair Chellman said the subcommittee discussed changing the RFP to an RFQ because top tier firms were favored. He said he talked to a firm who was interested in participating and that it was moving toward June or July. Ms. Begala said an RFQ would delay the process. Mr. Bowen said there was a sense of urgency because he thought the Housing Committee was developing a strategy for Portsmouth housing that needed to have some relationship to the Planning Board. Mr. Hewitt agreed. Chair Chellman said it wouldn't change the timeline. It was further discussed.

*The motion **failed** by a vote of 5-3, with Mr. Giuliano, Councilor Moreau, Mr. Almeida, Vice Chair Mahanna, and Chair Chellman voting against.*

The Board discussed doing a special workshop or starting the meeting an hour early.

At this point in the meeting, Ms. Begala read a statement stating that she was resigning from the Board effective immediately. [Timestamp 3:49:28]

VI. ADJOURNMENT

The meeting adjourned at 10:53 p.m.

Respectfully submitted,

Joann Breault

Planning Board Recording Secretary