

**PLANNING BOARD
PORTSMOUTH, NEW HAMPSHIRE**

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

7:00 PM Public Hearings begin

May 16, 2024

MEMBERS PRESENT: Rick Chellman, Chairman; Karen Conard, City Manager; Joseph Almeida, Facilities Manager; Beth Moreau, City Councilor; Members Paul Giuliano, Anthony Coviello and Andrew Samonas; Bill Bowen, Alternate

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ALSO PRESENT: Peter Stith, Planning Department Manager

MEMBERS ABSENT: Vice-Chairman Greg Mahanna, James Hewitt

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Chair Chellman called the meeting to order at 7:00 p.m. He introduced the new member Anthony Coviello. Alternate Bill Bowen took a voting seat for the evening.

I. APPROVAL OF MINUTES

- A. Approval of the April 18, 2024 meeting minutes.
- B. Approval of the April 25, 2024 meeting minutes.

*The April 18 and April 25 meeting minutes were unanimously **approved** as submitted.*

II. DETERMINATIONS OF COMPLETENESS

SITE PLAN REVIEW

*Councilor Moreau moved to consider Items A, B, and C as a group, seconded by Ms. Conard. The motion **passed** with all in favor.*

- A. The request of **Atlas Commons LLC (Owner)**, for property located on **581 Lafayette Road** requesting Site Plan review approval for two 4-story additions to the existing building that will total 72 residential units with associated site improvements including lighting, utilities, landscaping, and stormwater treatment/management and a Conditional Use Permit from Section 10.5B72 for increased density, building height and footprint. Said property is located on Assessor Map 229 Lot 8B and lies within the Gateway Corridor (G1) District.
- B. The request of **15 Middle Street Real Estate Holding CO, LLC (Owner)**, for property located at **15 Middle Street** requesting Site Plan approval for the addition of 3 residential units in an existing commercial building. Said property is located on

Assessor Map 126 Lot 12 and lies within the Character District 4 (CD4), Downtown Overlay and Historic Districts.

- C. The request of **RIGZ Enterprises LLC (Owner)**, for property located at **822 Rt 1 Bypass** requesting Site Plan review approval to demolish the existing building and construct a new commercial building as well as associated paving, stormwater management, lighting, utilities and landscaping.

Councilor Moreau moved that the Board determine that Items A, B and C are 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 applications for consideration. Ms. Conard seconded. The motion passed with all in favor.

III. PUBLIC HEARINGS -- UNFINISHED BUSINESS

- A. The request of **Atlas Commons LLC (Owner)**, for property located on **581 Lafayette Road** requesting Site Plan review approval for two 4-story additions to the existing building that will total 72 residential units with associated site improvements including lighting, utilities, landscaping, and stormwater treatment/management and a Conditional Use Permit from Section 10.5B72 for increased density, building height and footprint. Said property is located on Assessor Map 229 Lot 8B and lies within the Gateway Corridor (G1) District. (LU-23-189)

SPEAKING TO THE PETITION

[Timestamp 7:33] Project engineer John Chagnon was present on behalf of the applicant, with project architect Tracy Kozak, landscape architect Terrence Parker and owner Mark McNabb. Mr. Chagnon reviewed the site plan and all other plans in detail. He explained why the plans met the goals of the Master Plan and the housing policy mixed-use criteria. Landscape architect Terence Parker reviewed the landscape plan.

[Timestamp 26:40] Ms. Kozak reviewed the architectural plans, noting that Buildings A and B were each five stories tall with a mix of 36 units in each building, with 15 units designated as workforce housing. She reviewed the parking plan.

[Timestamp 32:20] Mr. Coviello noted the configuration of the one-way traffic around the site and said the plan had a creation of an entry corridor in that one-way. Mr. Chagnon said the one-way was part of the conversion of the cinema to the Tuscan Market, and he explained that it had to do with diagonal parking. Mr. Coviello asked if there would be a budget for lighting the trail to the high school. Mr. Chagnon said it would be lit and that all the details would be negotiated with the school department. Mr. Samonas referred to the tandem parking and asked if there were concerns about congestion. Mr. Chagnon said there were not because the width of the thru-way was a 22-ft aisle and there would be sufficient space for people to maneuver their cars.

[Timestamp 37:10] Mr. Bowen noted that there were four or five intersections in that vicinity that the traffic analysis rated from Category C to F, with F being the worst case and where the

traffic turned left out of Ledgewood north of the development and onto Route One before the intersection. He said the analysis took the next ten years into consideration but there were six or seven projects on Lafayette Road going south and 30 pieces of property had just been rezoned so that people could built more housing on Lafayette Road going north, so the intersections could be worse. He asked what could be done for that intersection. Mr. Chagnon said he didn't prepare the traffic analysis but the recommendations on the level of service included Categories E and F during the morning peak and indicated that there would be an additional two vehicles in the queue area. He said it didn't seem that the proposed development would have a significant impact of additional vehicles at that time. He said there were scoping meetings with the City's traffic engineer and it was decided that other improvements would be not be required. Mr. Almeida asked if the team addressed the Board's previous concern about having recreation for young kids playing on the site, like a small ball court. Mr. Parker said that was the reason for doing the access to the high school playing fields. He said all the significant outdoor space was permeated by paths.

[Timestamp 43:58] Mr. Giuliano asked about the current and future parking for the existing uses. Ms. Kozak said the current parking was 154 spaces for the restaurant use only and the applicant would provide 173 spaces for the mixed use. She said they included a share parking time-of-day analysis in the packet and that the busiest time of the week would be the weekday evenings. It was further discussed.

[Timestamp 50:42] Councilor Moreau asked if there was a plan on ensuring that the existing businesses would have places to park and access to their properties during construction. Mr. McNabb said the property had a cross easement with the abutting property owner and the parking at the mall was available for both parcels at night. He said they would negotiate with the businesses and ensure that they would be given their rights to the property and parking. Chair Chellman asked if the cross easement was specific to the number of a shared use of the space. Mr. McNabb said it was a shared use and that parking on both lots could be used. Chair Chellman asked if the proposed parking plan for the building was the one with the angled parking. Mr. Chagnon agreed and said the plan with the old layout would be corrected and that the encroachment would stay until the project started construction. Chair Chellman said the size of the south building was increased by 10 feet from the prior plan and asked if all the other calculations took that into account. Mr. Chagnon said it was only at the basement. Mr. Bowen asked what the sizes of the designated workforce houses were. Ms. Kozak said the smallest one was a n 872-sf wo-bedroom and the largest was 2,057 square feet with three bedrooms. She said there would be no social service administration on site.

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

Conditional Use Permit

- 1) *Councilor Moreau moved that the Board find that the Conditional Use Permit application meets the criteria set forth in Section 10.5B11 and 10.5B73 and to 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 modifications of standards from Section 10.5B22.40 Special Setback Requirements on Lafayette Road, Section 10.5B73.20 to allow the public realm improvements to be located in a different zoning district, Section 10.5B34.80 to allow a building with 72 units, Section 10.5B41.80 to allow 7.6% community space where 10% is required, and to allow a building footprint of 42,434 square feet where 24,000 is allowed. Ms. Conard seconded. The motion **passed** with all in favor.*
- 3) *Councilor Moreau moved that the Board grant the Conditional Use Permit with the following **condition**:*
 - 3.1) *Prior to the issuance of a Certificate of Occupancy, the applicant will revise the design of the public realm improvements to a form satisfactory to the Superintendent and City Manager.*

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

Site Plan Approval

- 1) *Councilor Moreau moved that the Board 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. Mr. Almeida seconded. The motion **passed** with all in favor.*
- 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.*
- 2.2) *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.*
- 2.3) *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>*

- 2.4) *A recordable landscape license revocable by the City. The Applicant with provide and maintain adequate evidence of insurance for the maintenance of City property, including the City as additional insured. The amount and form of such insurance shall be set by the Public Works Director and the City Attorney.*
- 2.5) *Final site plan set shall be updated to show revised parking layout.*
- 2.6) *The public realm improvements shall include appropriate lighting if approved by the Superintendent and City Manager.*

Conditions to be satisfied subsequent to final approval of site plan but prior to the issuance of a certificate of occupancy and release of the surety:

- 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.*
- 2.8) *A stormwater inspection and maintenance report shall be completed annually and copies shall be submitted for review to the City's Stormwater Division/Public Works Department.*

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

IV. PUBLIC HEARINGS – NEW BUSINESS

- A. The Planning Board will hold a public hearing on the following amendments to Chapter 10, ZONING ORDINANCE, CITY OF PORTSMOUTH, of the Ordinances of the City of Portsmouth, be amended to language related to solar energy in Article 6 Overlay Districts and Article 15 Definitions, pursuant to Section 10.150 of the Zoning Ordinance.

[Timestamp 1:11:50] Chair Chellman said there were proposed amendments to Chapter 10 of the zoning ordinance related to solar energy. He explained the process and outlined the recommended changes. He noted that minimally visible solar panels were able to get an administrative approval, whereas those that could not be seen could get an exemption. He said the City Council had referred to a situation where a building's roof could not handle the load of a solar system and suggested that the Historic District Commission (HDC) could request that the applicant provide proof that the building could handle the solar system without doing substantial modifications. He reviewed all the definitions of Section 10.1530.

[Timestamp 1:19:00] Mr. Almeida asked what the purpose was for the original proposition to take solar panel approval away from the HDC. Councilor Moreau said a few City Council members thought solar energy panels should be allowed in the south end and, after a lot of back-and-forth discussion, it was decided that the Planning Board and HDC would have a few work sessions together to decide what changes could be made. She said the first reading would be done at the City Council's June meeting. Mr. Almeida said he hadn't thought there was a

problem to begin with, noting that there was an 80 percent approval rate of solar panel requests in the Historic District, He said he was happy to move forward. Mr. Giuliano asked if changing roof materials other than wood or slate on existing structures would still be under the HDC's purview. Councilor Moreau agreed but said they were just proposals. Mr. Coviello said he was concerned about other view corridors other than abutting properties. Chair Chellman said the City's Legal Department said that it should be limited to the adjacent way but that it could be any public way. It was further discussed. Ms. Conard said the issue of whether a structure could support a solar system would be something determined by the City's code official as part of the building permit and that she was concerned about some of the wordsmithing. Chair Chellman said he thought it was beyond a code officer's ability to know what a historic building might or not be able to take. He said the term 'minimally visible' was a subject of criteria that needed to be included and that it was an HDC call. It was further discussed.

Chair Chellman opened the public hearing.

SPEAKING IN FAVOR OF THE AMENDMENTS

Kerry Vautrot representing the Portsmouth Advocates said the Advocates supported the proposed language and thought it was consistent with industry standards and preservation best practices for the successful integration of rooftop solar technologies into historic districts. She said providing by-right exemptions for certain installations and increasing administrative approvals for others was appreciated. She said the proposed language outlined a path to reduce the regulatory burden on applicants while maintaining the district's architectural integrity. She said 'structural' was important to include. She said historic preservation standards and definitions were more nuanced but had been included because of character defining features as defined by the National Park Service. She said they did not lend themselves to specific distances or percentages and that it took a trained eye to provide some of the nuanced review. She hoped the City would work on clarifying what the term 'minimally visible' meant, She said the amendments were a much better path moving forward than removing all HDC approval.

Elizabeth Bratter of 159 McDonough Street said the importance of having someone look at the structure to see if it could support solar panels should be left in.

Margot Doering of Jones Avenue and HDC Vice-Chair thanked the Planning Department, the City Staff, the Planning Board, and the City Council for working with the HDC. She said it was important to find ways to work for solutions that were inclusive and she thought what was proposed showed a true effort to work toward Portsmouth's sustainability and preservation goals.

Reagan Ruedig of 70 Highland Street and HDC Chair said a lot of people on the HDC, Planning Board and City Council had been working hard to figure out how to come together and put something down in writing in proper ordinance 'speak' that would satisfy everyone's goals and encourage sustainability and protect the Historic District. She said there was still time to make some adjustments in the language before the first hearing on June 3.

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

DECISION OF THE BOARD

*Mr. Coviello moved to request that the rules be suspended so that he could ask a question of Mr. Ruedig. Mr. Samonas seconded. The motion **passed** with all in favor.*

Mr. Coviello said he was concerned about the visibility of solar panels. Ms. Ruedig said the Commission originally drafted up language that said the panels would not be visible from any public way but that it could be taken out. She said they would consider the abutment language but their concern was far-off views and that she shared Mr. Coviello's concerns.

[Timestamp 1:39:41] Chair Chellman said an amendment to the proposal was possible. Councilor Moreau said there were notice requirements for the June 3 meeting and asked if what was approved that night had to be noticed for June 3. Chair Chellman recommended that the Board advance it to get it in front of the City Council with the understanding that the Planning Board and HDC would do that next step and bring the topic back for discussion. City Senior Assistant Attorney Jane Ferrini was present and explained that it was a separate recommendation from the Planning Board on what the joint work of the HDC and Planning Board would like to bring forward. She said the vote that night would just be a recommendation on the solar panel amendment and that it would be easier if the amendment about a change to the view and the abutting road could be made that night and then presented to the City Council through Councilor Moreau. Councilor Moreau suggested moving forward with what was drafted to the first reading in June. Mr. Samonas agreed.

*Mr. Samonas moved that the Board recommend the May 16, 2024 Draft amendments to City Council and for them to be included under Councilor Moreau's name at the June 3, 2024 Council meeting. Mr. Almeida seconded. The motion **passed** with all in favor.*

- B.** The request of the **City of Portsmouth (Owner)**, for property located at **0 Maplewood Avenue**. The City is requesting a Wetland Conditional Use Permit to complete upgrades to the existing drainage outfall behind the cemeteries (adjacent to Deer Street) by adding an additional 48" pipe in parallel to the existing 48" pipe. This work is being proposed in preparation for increased capacity needs to accommodate sewer separation on Fleet Street and surrounding areas. Compensatory mitigation is proposed to offset proposed wetlands impacts. The proposed mitigation will also serve as embankment revetement to aid in stabilizing the slope behind the cemetery that is currently being undermined. Area of disturbance includes approximately 590 SF impacts from outfall improvements, 3,870 SF proposed for mitigation/Marsh restoration. A portion of the outfall work is located on the abutting property of #90 Maplewood Avenue. City DPW has been corresponding with the owner of this property and draft easement documents have been provided to the property owner. Said property is located on Assessor Map 124 Lot 2, Map 125 Lot 19, and Map 164 Lot 4 and lies within the Office Research (OR) Municipal and Historic Districts. (LU-24-43)

SPEAKING TO THE PETITION

[Timestamp 2:09:45] Dave Desfosses of the Department of Public Works was present to review the petition, with Dan Rochette of Underwood Engineers. He said it started as a consent decree from the EPA to drain an area of the downtown known as the Fleet Street area and involved the Vaughan Mall, Congress Street by the Music Hall, and Fleet Street up to Market Square. He said a second outfall pipe was proposed that would increase the capacity of the downtown's drainage system and provide stormwater treatment. He explained how it would work. Mr. Rochette reviewed the outfall improvements and the Conservation Commission's conditions.

[Timestamp 2:25:10] Chair Chellman asked if there would be an archaeologist present during the digging near the cemetery. Mr. Rochette said it would be part of their environmental review process if anything was found during the excavation. Mr. Coviello asked for further explanation of the high and low tide elevations, which Mr. Rochette provided. Mr. Coviello asked if the stone would continue being imbedded into the soil so there would not be undermining of the stone. Mr. Rochette said they would key the stones in and explained the process. Mr. Bowen asked if it was the beginning of a broader problem as far as the need to do the separation and increase the outflow. Mr. Rochette said the separation was part of the City's EPA consent decree to reduce combined sewer overflows, which he explained further. Mr. Bowen asked if there were additional similar projects in the queue. Mr. Desfosses said there were a few major outfalls in the City and that the project was one of the bigger outfalls. He said there was nothing in the current queue.

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

Wetland Conditional Use Permit

- 1) *Mr. Giuliano moved that the Board find that the Conditional Use Permit Application meets the requirements set forth in Section 10.1017.650 of the Ordinance and adopt the findings of fact as presented. Mr. Samonas seconded. The motion **passed** with all in favor.*
- 2.) *Mr. Giuliano moved that the Board grant the Conditional Use Permit with the following **conditions**:*
 - 2.1) *All necessary approvals from involved property owners will be acquired prior to the issuance of a City building permit and prior to any associated approvals from the New Hampshire Department of Environmental Services.*
 - 2.2) *The applicant shall remove all debris/trash from the wetland and 25' vegetative buffer, including the wood decking/pallet structure.*

2.3) *In accordance with Section 10.1018.40 of the Zoning Ordinance, applicant shall install permanent wetland boundary markers where applicable. In addition to the wetland boundary markers, an educational sign describing the project shall be installed near the restoration area and fencing should be utilized to keep disturbances such as dogs and geese from the area.*

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

- C. The request of **15 Middle Street Real Estate Holding CO, LLC (Owner)**, for property located at **15 Middle Street** requesting Site Plan approval for the addition of 3 residential units in an existing commercial building. Said property is located on Assessor Map 126 Lot 12 and lies within the Character District 4 (CD4), Downtown Overlay and Historic Districts. (LU-24-35)

SPEAKING TO THE PETITION

[Timestamp 2:31:44] Project engineer Alex Ross was present on behalf of the applicant and reviewed the petition. He noted that the property was recently renovated to house a hotel and small restaurant. As part of the City's agreement in 2020, he said site review approval was required for the final phase of the work but that the inn and restaurant were exempt from site plan review and parking requirements.

Mr. Coviello asked if the units were market rate ones, and Mr. Ross agreed. Chair Chellman opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Robin Husslage of 27 Rock Street said she was concerned about whether people would park in her adjacent neighborhood.

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

DECISION OF THE BOARD

Site Plan Approval

- 1) *Mr. Giuliano moved that the Board 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.*
- 2) *Mr. Giuliano moved that the Board find that the requested waivers will not have the effect of nullifying the spirit and intent of the City's Master Plan or the Site Plan Review Regulations, and to waive the regulations as requested. Mr. Almeida seconded. The motion **passed** with all in favor.*
- 3) *Mr. Giuliano moved to grant Site Plan approval with the following **condition**:*

3.1) *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.*

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

D. The request of **RIGZ Enterprises LLC (Owner)**, for property located at **822 Rt 1 Bypass** requesting Site Plan review approval to demolish the existing building and construct a new commercial building as well as associated paving, stormwater management, lighting, utilities and landscaping. Said property is located on Assessor Map 160 Lot 29 and lies within the Business (B) District. (LU-23-209)

SPEAKING TO THE PETITION

[Timestamp 2:40:21] Project engineer Alex Ross was present on behalf of the applicant. Dave Grzybowski of 237 Mill Road, Hampton, NH was also present. Mr. Ross said the application was for improvements to an existing fully-developed site, a .68 acre parcel that included a vacant gas station that would be removed. He said the abutting City Tobacco wanted to move the business to the new building for more room. Mr. Ross reviewed the plans and said it was a complex site due to drainage and traffic issues, which he further explained.

[Timestamp 2:50:55] Mr. Coviello asked if there was enough width at the rear of the building for vehicle access. Mr. Ross said there was enough width for maintenance but not public travel. Mr. Coviello asked if there was lighting. Mr. Ross agreed and said it projected in the direction of the neighbors and was directed downward in the rear area. In response to further questions from Mr. Coviello, Mr. Ross said there was no cross section through the property showing the elevation of the fence and the lighting and that the fence was a 6-ft tall chain link one with black inserts.

[Timestamp 2:53:46] Mr. Grzybowski explained why the condensers had to be located where they were. Mr. Coviello asked if the sidewalk was on the front of the property and if pedestrian travel was allowed. Mr. Ross said a sidewalk was proposed and the existing island would be extended to the property line per DOT's request. Mr. Coviello said the area had some gas monitoring for prior gas station leaks and so on, and he asked if the project had come across any of that. Mr. Ross said the State was involved the previous summer when the tanks were removed and that all the proper permits were obtained. Mr. Grzybowski said two monitoring wells were also removed. Mr. Ross said there was a wooded area that would be a sound barrier. Mr. Coviello said shrubs and trees did not block sound. Mr. Bowen said the last Master Plan had a conversion of the bypass to a road similar to what Lafayette Road had, with the neighborhood streets crossing. He asked if the applicant thought about the elimination of the dividing barrier in the center. Mr. Ross said it would be possible and that the proposed improvements would not prevent it. Chair Chellman said it was a State highway and thought the applicant would not preclude it. Councilor Moreau asked if the existing fence in the back of the property would be replaced. Mr. Ross said portions of that fence were not in good condition, so they would replace it with the proposed chain link fence and black woven screen. Councilor Moreau asked if any existing greenery would be removed. Mr. Ross said no. Mr. Giuliano asked if there were plans for the 806 Route One building, and Mr. Grzybowski said no.

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

Site Plan Approval

- 1) *Councilor Moreau moved that the Board 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.*
- 2) *Mr. Giuliano moved that the Board find that the requested waivers will not have the effect of nullifying the spirit and intent of the City's Master Plan or the Site Plan Review Regulations, and to waive the regulations as requested. Ms. Conard seconded. The motion **passed** with all in favor.*
- 3) *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:

- 3.1) *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.*
- 3.2) *The applicant shall prepare a Construction Management and Mitigation Plan (CMMP) for review and approval by the City's Legal and Planning Departments.*
- 3.3) *The applicant shall add a note on the plan requiring advanced notification to DPW of the construction of improvements within the public rights-of-way and on site.*
- 3.4) *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>*

Conditions to be satisfied subsequent to final approval of site plan but prior to the issuance of a certificate of occupancy and release of the surety:

- 3.5) *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;*
- 3.6) *A stormwater inspection and maintenance report shall be completed annually and copies shall be submitted for review to the City's Stormwater Division/Public Works Department.*
- 3.7) *The applicant shall install a solid 6-foot fence in place of the proposed chain link fence in order to block light and inhibit sound.*

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

Mr. Samonas and Councilor Moreau recused themselves from the following petition.

- E. 361 Hanover Steam Factory, LLC (Owner)**, for property located at **361 Hanover Street**, seeking Design Review for the construction of a new building along Hanover Street with a 20-foot tunnel entrance from Hanover Street to a central courtyard between the new building and the existing 361 Hanover Street (Portsmouth Steam Factory) building. The courtyard will provide access to the indoor parking areas at both the existing and the new building. The upper floors of the new Hanover Street building will contain 12 residential dwelling units and the Portsmouth Steam Factory Building would contain 24 dwelling units; for a total of 36 dwelling units. There would be 72 off-street parking spaces in the aggregate. Said property is located on Assessor Map 138 Lot 63 and lies within the Character District 5 (CD5) Downtown Overlay and North End Overlay Districts. (LUPD-24-3)

SPEAKING TO THE PETITION

[Timestamp 3:11:32] Attorney John Bosen was present on behalf of the applicant, with the owner and principal constructor Steve Wilson, Shayne Forsley of Hampshire Development Corporation, project engineer John Chagnon, and consultant Nick Cracknell. Attorney Bosen reviewed the reasons why the property had complicated zoning. He said the project was designed in full compliance with the ordinance and required no zoning relief. He reviewed the project's goals, the neighborhood and historic contexts, and existing zoning.

[Timestamp 3:18:39] Mr. Chagnon reviewed the existing site conditions and the potential for other improvements and maintenance. He summarized the design review, and Attorney Bosen then reviewed the design review summary.

[Timestamp 3:27:51] Mr. Giuliano said it seemed like the right time for some creative engineering solution to the Powerhouse Building and the retaining wall along Foundry Place. He said the vertical concrete wall leaning toward Foundry Place might be a negative at some point, and the Powerhouse Building foundation was very exposed. Mr. Wilson said there were different conditions of the wall: it was a modern poured concrete wall on the southeast side of the building in good repair but needed some attention; around the corner, it transitioned to a more modern

wall in good condition, then transitioned going west toward the garage and would need more attention. He said it then transitioned to the foundation of the Rock Street garage and was in poor condition. He said that area needed to be shored up and encapsulated in a new concrete wall to take the weight of the building off the rubble. He said it would be considered as part of the proposal to the City Council to shoulder the burden of repairing that wall with their input and approval and would require engineering and some attention from the contractor. Mr. Coviello asked what the effect would be of eliminating the wall away from the Rock Street Garage. Mr. Wilson explained that it was a significant wall and everything on the garage side of it was a broadened sidewalk, and there would only be 12 lateral feet toward the proposed building to slope down to that elevation, so he thought eliminating the wall would be prohibitive. He noted that there was also a transformer there. Mr. Coviello asked if the applicant's intention was to take ownership of licensing that land. Mr. Wilson said they had no reason to own it and didn't plan to expand it. He said it was mostly aesthetics and they just wanted to get a license to improve and maintain the land around the building. Mr. Coviello asked if the area could be improved from being an ugly retaining wall. Mr. Wilson said he didn't think removing the retaining wall was a possibility because the transition area would be prohibitive. Mr. Coviello asked if the transition area could become a building. Mr. Wilson said it would have to be commercial space but that they had no interest in that. Chair Chellman said he shared the same concern. He thought there was something the City and the applicant could do together to improve it, like extend the building out, without having it be commercial. He said the wall didn't do a thing and the sidewalk was all weeds. Mr. Wilson said they would have to discuss it with the City Staff and also listen to the abutters' concerns.

[Timestamp 3:38:10] Mr. Almeida said the wall could be replaced by a terraced landscaping instead of a building. Mr. Wilson said they wanted to make that back area more inviting and that they were not adverse to public accessibility, Mr. Bowen suggested a footpath to the Foundry Garage for guests. He said an alternative to the tunnel would be to have two buildings and have them face Pearl Street instead of being offset from Pearl Street. Mr. Wilson said they developed a plan that had two separate buildings due to the necessity of having a 22-ft drive behind and the buildings being rectangular, but it didn't mean that the building had to be one continuous one. He said they could bring in more details of the two alternatives to the tunnel so that the Board could see what two buildings would look like. Ms. Conard suggested a site walk, and Mr. Wilson and Attorney Bosen agreed. Chair Chellman said it would help if the tunnel had an arch.

Chair Chellman opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

First Round Speakers

[Timestamp 3:42:47] Elizabeth Bratter of 159 McDonough Street said the project should include all the necessary documentation of ownership and impacts because it was stated that licensing and easements would be developed. She said the information regarding the license did not meet the site plan review regulations because it was an inaccurate representation regarding with whom the licensing agreement was made, noting that it wasn't with the many different LLCs but was with the Kearsage Mill Unit Owners Association. She said the license was allowed to pass with

every sale of the building because it was attached to the condo association. She said the failure to disclose the existing license as a parking exchange could be a violation of the regulation because it would be a big part of the impact on adjoining streets and properties. She said Portsmouth traded the use of 18 parking spaces in the rear of the building for private use and in return, 18 spaces on the front were turned into public use from 6 to 8 a.m. during the week and on weekends. She said there had been issues of 361 Hanover Street not honoring the agreement. She said some neighbors were told that they could not park there, and private metering was added. She said eliminating the 18 spaces for the public would have a big impact on the neighborhood and its businesses. She said the second piece of information not disclosed was the access agreement, and the issue was who had the 14-ft wide access easement and if it was open to the public. She asked that the applicant not be allowed to move forward with what was presented.

Nicole Lapiere of 44 Rock Street said she was a direct abutter and wanted lighting and traffic studies done. She said the current proposed structure was monolithic and the light study would determine how the structure would impact the homes on Hanover Street and the residents in the old Heinemann Building. She said a traffic study was needed based on the increased demand that would be created on parking and traffic. She said the extra story in the Heinemann Building would result in 50 off-street parking spaces and eight visitor spaces located in the court yard and ground floors, but 46 units equaled 92 cars. She noted that street parking demand would be increased based on schedules and the only entrance/exit was across from Pearl Street. She said she was concerned about a huge modern structure abutting old Colonial homesteads.

Robin Husslage of 27 Rock Street said she was a direct abutter and was not against the development at 361 Hanover, especially if it added housing, but was against the Board accepting the proposal in its current form because the zoning was incorrect. She said CD5 zoning did not belong in the center of her small historic neighborhood. She said she and neighbors worked with the Planning Department for several years to have the property rezoned and that the Planning Department agreed. She said the building should be broken up into smaller ones.

Randy Wright of Sudbury Street said he was not against the site's development but thought it was too much, noting the heavy traffic in the neighborhood and all the one-way streets.

Kathryn Waldwick of 30 Parker Street said she was concerned about adding more cars to the traffic and the difficulty in pulling out onto Hanover and Islington Streets. She said it needed to be studied more and that the monolithic building would not fit into the neighborhood.

Matt Wirth of 439 Hanover Street said the property should be developed in a respectful manner for the neighborhood. He said the CD5 Character District was not appropriate to the Hanover Street side of the property. He said the North End Incentive Overlay District currently bisected the lot and thought the Downtown Overlay District should do the same and that the property should also be subject to HDC oversight. He compared it to spot zoning. He said the driveway should align with Pearl Street because diagonal movements were dangerous ones for vehicles. He asked how cars would come out through the tunnel and see Hanover Street pedestrians.

Sean Caughran of 407 Hanover Street said he was a direct abutter and asked the Board to consider the impact the development would have on the historic nature of the abutting homes. He

said his home was a 225 year-old timber frame Colonial in a cluster of similar Colonials and that the development would dwarf those homes. He said the project would set a precedent and diminish the neighborhood's character. He said it was not a transition from downtown to the neighborhood as promised by the City but was more like downtown in their neighborhood. He said there should be an access for the cars to exit to relieve Hanover Street traffic.

Marcy Vaughn of 407 Hanover Street said there were two issues, the burial ground and the as of right issues. She said she saw no mention of the Portsmouth Steam Factory Burial Ground, the site of four circa 1700 graves. She asked that the issue be evaluated because new construction was prohibited 25 feet away from a known burial ground, and the purpose of that 25-ft buffer was to protect the graves of servants and slaves who might have been buried in unmarked graves in the vicinity. She asked if there was a due process violation of her neighbor's right when there was a unanimous vote to hold a public hearing for a proposed amendment and it was not held.

Jill Dignan of 437 Hanover Street (via Zoom) said the development should be respectful to the existing neighborhood. She said there were many issues, including the potential violation of massing limits, insufficient parking spaces, and traffic congestion. She said the Master Plan emphasized long-term sustainability and resilience, and the proposed parking and traffic impacts could affect it. She said an environmental study be done and thought a site walk was critical for the Planning Board to get a feel for the neighborhood. She said she did not know of any other development in a Portsmouth residential neighborhood that included a tunnel and thought the developer could be taking advantage of the CD5 zoning.

Second Round Speakers

[Timestamp 4:11:20] Elizabeth Bratter of 159 McDonough Street asked the Board to ensure that the developer would not be doing the community space or using the North End Incentive Overlay District regulation. She said the North End Vision Plan was finalized before the Foundry Place Garage was built but now there was a 10-ft grade difference. She said the belief then was that all the properties would exit onto Foundry Place but they ran into problems and now there was a giant hole in the ground. She said the applicant's parcel had a large public lot between it and Foundry Place and the Planning Department said they would clean it up. She said a fire truck required a minimum height of 12 feet, which made the tunnel unrealistic. She said the building length was not in keeping with the size of the Hanover Street buildings. She asked that the Board not allow the preliminary review to move forward.

Marcy Vaughan of 407 Hanover Street said the Board should pay attention to the concerns about January 20, when the Board held a hearing and authorized a public hearing for the neighbors to provide input on a zoning amendment. She said if it had been noticed, she and several other neighbors would have attended the meeting. She said the public hearing was never held, and the result was the proposed development. She asked if there was a due process violation.

Matt Wirth of 439 Hanover Street gave the Board an aerial view of that area from 1927 that showed the Ford dealership with a 2-1/2 story building and the surrounding homes. He said the proposed building was taller than the Ford dealership and proved how massive the building would be over the adjacent properties. He said the buildings along Hanover Street should be 2-

1/2 stories high to match the abutters. He said it was the Board's responsibility to take on the proper scale and massing for the neighborhood, seeing that it wasn't under the HDC's purview.

Randy Wright of 30 Sudbury Street said he and his neighbors had put up with garages and four 5-story buildings but enough was enough. He asked how his 1764 house coincided with a tunnel.

Third Round Speakers

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

DISCUSSION OF THE BOARD

[Timestamp 4:23:46] Chair Chellman said the purpose of design review was not to finally approve anything in the project but to say that there was sufficient information to proceed. He said if the Board found that they didn't have enough information, they had to enumerate what was missing. He said the challenge to the basis of the zoning was beyond what could be considered that evening. Mr. Almeida said a traffic study was needed because the neighborhood residents deserved it and the project would need it to be successful. He said an archaeologist was needed, as well as shadow studies to determine the impact a building of that size would have on light and shadows. He said the Foundry Garage was never a test for whether commercial space would work in the neighborhood. He said the Board had heard thorough investigations of every topic by the neighbors and thought the project had to respond to them. Mr. Coviello said the Master Plan played somewhat of a role but the zoning was in place when the applicant applied. He said the Board wasn't the HDC and had a hard time defining the façade aesthetics. He said a mansard roof wasn't in their purview, nor was massing, but traffic flow with the tunnel was. He said the grade was a well-defined mathematical thing and it wasn't a matter of the applicant choosing to take advantage of the slope. Chair Chellman said there were limits of building size in the Character Districts. Mr. Coviello said he thought there should be an archaeologist and that the Board should do a site walk and traffic and light studies. It was further discussed.

[Timestamp 4:30:33] Chair Chellman asked if the additional studies would rise to the level of deficiencies of information or would just identify things as needed in the future. Mr. Giuliano said a traffic study, with the existing conditions and the by right uses of the property, could potentially create more traffic than what was proposed by the project. Chair Chellman referred to the recommendations of a Pearl Street alignment, of whether the gate should come out at the end of Foundry Place, and whether it was possible to have an exit onto Foundry Place for the project. He said a traffic study could look at how many vehicles could make that turn. Mr. Giuliano asked if the Mr. Almeida's proposed traffic, shadowing, and archeological studies would be necessary to complete the review process. Mr. Stith said they would likely come up during the site review process. Mr. Almeida said if there was a burial ground, the development could not be built within 25 feet of it, and there could also be abandoned burial grounds. Mr. Coviello said a legal opinion was needed if those issues denied the design review. Ms. Conard asked if there was any precedent for postponing to get the Legal Department's feedback. Chair Chellman said the Board had legitimate questions and could consider continuing the petition to a time and date certain. He said if they denied the petition, they had to be specific as to how it was deficient. He said it was a comprehensive package and that an archaeological study was not something they

could request during design review and was not a reason to deny. He read that the Board had to determine if a request for design review included sufficient information to allow the Board to understand the project and identify potential issues and concerns and vote on whether to accept the request for design review and schedule a public hearing. Mr. Almeida said he understood the project and the concerns but it didn't mean that those concerns would go away if the Board moved forward. He said the Board must comply with the language. It was further discussed.

DECISION OF THE BOARD

*Mr. Giuliano moved that the Board find the design review process complete and to schedule a site walk and public hearing. Ms. Almeida 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, and Other Matters

There was no discussion of other business.

VI. ADJOURNMENT

The meeting adjourned at 11:45 p.m.

Respectfully submitted,

Joann Breault
Planning Board Recording Secretary