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# MEMORANDUM

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**TO:** Planning Board  
**FROM:** Rick Taintor, Planning Director  
Juliet T.H. Walker, Assistant Planning Director  
**DATE:** April 14, 2017  
**RE:** Staff recommendations for April 20, 2017 Planning Board meeting

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## I. DETERMINATIONS OF COMPLETENESS

### A. Subdivision

1. The application of the City of Portsmouth and Peter Happny, Owners, for property located at Rock Street Park and 66 Rock Street

#### Planning Department Recommendation

*Vote to determine that this application for subdivision approval is complete (contingent on the granting of any required waivers under Section III of the agenda) according to the Subdivision Rules and Regulations and to accept it for consideration.*

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## II. PUBLIC HEARINGS – OLD BUSINESS

*It is recommended that Items A and B under Public Hearings – Old Business be discussed together and voted on separately.*

*A motion is required to consider these two items together.*

A. The application of **J&M Family Properties, LLC, Owner, and Dunkin' Donuts, c/o JFS Management Co., LLC, Applicant**, for property located at **802 Lafayette Road**, requesting a Conditional Use Permit under Section 10.1017 of the Zoning Ordinance for work within the tidal wetland buffer for pavement and drainage improvements and onsite stormwater quality treatment, with 11,200 ± s.f. of impact to the tidal wetland buffer. Said property is shown on Assessor Map 244 as Lot 2 and lies within the Gateway (GW) District. (This application was postponed from the November 17, 2016 Planning Board Meeting.)

B. The application of **J&M Family Properties, LLC, Owner, and Dunkin' Donuts, c/o JFS Management Co., LLC, Applicant**, for property located at **802 Lafayette Road**, requesting Amended Site Plan Approval to re-develop the parking lot for improved site and drive-through circulation, revised parking layout, new trash enclosure, drainage improvements and stormwater management, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 244 as Lot 2 and lies within the

Gateway (GW) District. (This application was postponed from the November 17, 2016 Planning Board Meeting.)

### Description

This project is to reconfigure the parking and drive-through circulation for the existing Dunkin' Donuts business. The drive-through lane is being adjusted to hug the north side of the building, while the parking will be moved to the outside of the drive-through and bypass lanes. On the south side of the building, the bypass lane will be widened and four parallel parking spaces will be added, increasing the width of pavement in that area from about 20 feet to 34 feet.

### Conditional Use Permit

In order to be granted a Conditional Use Permit for work within the wetland buffer, the applicant must satisfy the criteria for approval set forth in Section 10.1017.50 of the Zoning Ordinance, as follows:

1. The land is reasonably suited to the use, activity or alteration.
2. There is no alternative location outside the wetland buffer that is feasible and reasonable for the proposed use, activity or alteration.
3. There will be no adverse impact on the wetland functional values of the site or surrounding properties.
4. Alteration of the natural vegetative state or managed woodland will occur only to the extent necessary to achieve construction goals.
5. The proposal is the alternative with the least adverse impact to areas and environments under the jurisdiction of [the wetlands protection provisions of the Ordinance].

The existing site development is approximately 15 feet from the edge of the tidal wetland adjoining Sagamore Creek, and approximately 45 feet from the edge of a designated prime wetland. About one-half of the existing developed area of the site is within the tidal wetland buffer.

The proposed plan will result in a net increase of 1,148 sq. ft. of impervious surface on the site, resulting from an addition of 2,253 sq. ft. of impervious area on the south side of the building and reductions totaling 1,105 sq. ft. in three locations. In the wetland buffer, the plan shows a reduction of 372 sq. ft. of impervious surface within 50 feet of the wetland edge. Most of the increased pavement is proposed outside the wetland buffer, and no pavement is proposed closer to the wetland resource than currently exists today.

The proposal includes the addition of new stormwater treatment measures including catch-basins and a mechanical separator unit. The addition of the new stormwater facilities should have a benefit to the site over and above the impact from the new impervious surface.

The expansion of the parking and circulation area and the establishment of a new dumpster pad and enclosure will result in the removal of vegetation in the southwest corner of the site. The plan shows a reduction of 1,392 sq. ft. of natural wooded buffer within 150 feet of the wetland, and it appears that about half of this reduction will take place within the City's 100-foot wetland buffer.

### *Conservation Commission Review*

The Conservation Commission reviewed this application at its meeting on November 9, 2016, and voted unanimously to recommend approval with the following stipulations:

1. Low growth, native plants requiring low maintenance shall be planted in the back corner of the lot just outside (to the west) of the proposed dumpster pads. The new plantings shall cover an area equal or greater in size than the proposed dumpster pad expansion.
2. The hydro-seed mix area proposed on the plan shall be replaced with a conservation seed mix. The areas where the conservation seed mix is proposed shall be left unmowed.
3. Maintenance as specified by the manufacturer shall be conducted on the proposed "First Defense" stormwater unit, and copies of a maintenance report shall be provided to the Environmental Planner annually.

Stipulations #1 and #2 appear to overlap, because the new plantings described in #1 would at least partly be within the area proposed for seeding in #2. In addition, it is not clear that the planting area in #1 would fit on the west side of the site between the edge of pavement and the proposed tree line. Therefore, the Planning Department recommendation proposed modifications to the Conservation Commission's stipulations.

### Site Plan Review

The intent of the proposed site changes is to improve the drive-through traffic by eliminating an existing conflict with cars backing out of the parking spaces. However, this change will require pedestrians to cross the drive-through stacking lane. Staff were concerned about the resulting conflict between vehicular and pedestrian movements, but ultimately accepted the applicant's argument for the improvement in vehicular circulation (including access by large delivery trucks).

### *Technical Advisory Committee Review*

The Technical Advisory Committee reviewed this application at its meeting on November 1, 2016, and voted to recommend site plan approval with the following stipulations:

1. Maintenance requirements for the "First Defense" stormwater unit shall be added to the site plan.
2. The bike rack shall be removed from the pedestrian path and relocated on site.
3. The bike rack detail shall be the inverted U-style; specification are available from the Planning Department.
4. The sidewalk shall be concrete.
5. A lighting plan shall be added to the Plan set.
6. The existing light shall be removed.
7. Documentation shall be provided for access for the visually impaired and, if not adequate, make an accommodation to the crosswalk and ramp.
8. Documentation shall be provided demonstrating that that they are providing adequate stacking spaces for the drive-through lane.

On November 9, 2016, the applicant submitted a revised plan set addressing the TAC stipulations as follows:

1. Note 17 on Sheet 5 was added referencing an O&M manual, but the manual was not provided.
- 2-4. The bike rack was relocated and an appropriate detail was added.
- 5-6. Note 22 on Sheet 4 was added stating that no lighting changes are proposed.
7. The crosswalk was reconfigured for better access to the ramp.
8. Documentation regarding adequacy of stacking spaces was provided.

On November 10, 2016, the applicant submitted the O&M manual for the “First Defense” stormwater unit and requests for two waivers from the Site Plan Review Regulations, and these were subsequently forwarded to the Board for review.

Also on November 10, the applicant submitted a request for the Planning Board to waive its regulation requiring that “all projects submitted for Site Plan Review shall provide for dark-sky friendly outdoor lighting.”

### Planning Board Review

The Planning Department submitted the following recommendations for the November 17, 2016, Planning Board meeting:

#### A. Wetlands Conditional Use Permit

Vote to grant the conditional use permit with the following stipulation:

1. Low growth native plants requiring low maintenance shall be planted in the back corner of the lot adjacent to the proposed dumpster pads without encroaching on the proposed tree line shown on the plans. The new plantings shall cover an area at least equal to the proposed dumpster pad expansion (approximately 700 sq. ft.).
2. Any area at the back of the parking lot that is shown on the plan as to be hydroseeded, and that is not included in the planting area referenced in stipulation #1, shall instead be planted with a conservation seed mix and shall be left unmowed.
3. Maintenance as specified by the manufacturer shall be conducted on the proposed “First Defense” stormwater unit, and copies of a maintenance report shall be provided to the Environmental Planner annually.

#### B. Site Plan Approval

(A) Vote whether to find that a waiver will not have the effect of nullifying the spirit and intent of the City’s Master Plan or the Site Plan Review Regulations, and if so, to waive the following regulations:

- (1) Sec. 2.5.4 – Site Plan Specifications and Required Exhibits and Data, item 3.(j) – Outdoor Lighting (type and placement of outdoor lighting fixtures, and photometric plan).
- (2) Sec. 10.2 – Compliance with Zoning Ordinance (All projects shall comply with the outdoor lighting dark sky friendly standards provided in the Zoning Ordinance).

[Note: An affirmative vote of six members of the Planning Board is required to grant a waiver.]

(B) Vote to grant the Site Plan Approval with the following stipulations:

1. The Site Plan (Sheet 4 of 9) and Landscape Plan (Sheet No. 7 of 9) shall be revised as follows:
  - (a) Show the planting area required by conditional use permit stipulation #1.
  - (b) Show the area to be planted with a conservation mix as required by conditional use permit stipulation #2.
2. The following notes shall be added to the Landscape Plan (Sheet No. 7 of 9):
  - “1. This Site Plan shall be recorded in the Rockingham County Registry of Deeds.
  2. All improvements shown on this Site Plan shall be constructed and maintained in accordance with the Plan by the property owner and all future property owners. No changes shall be made to this Site Plan without the express approval of the Portsmouth Planning Director.”
3. The maintenance requirements for the “First Defense” stormwater unit shall be added to the site plan.

[If the requested waiver from the dark-sky friendly requirement is not granted;]
4. The site plan shall show replacement of the existing floodlights with fixtures complying with the dark sky friendly requirements of the Zoning Ordinance.

At its December 19, 2016, the Planning Board did not support the granting of the waiver from dark-sky friendly standards. At the applicant’s request, the Planning Board voted to postpone consideration of this matter to the Board’s April 2017 meeting.

#### Revised Site Plan Set

On March 28, 2017, the applicant a submitted revised plan set with revisions to Sheet 7 partially addressing the Planning Department’s recommended stipulation #1, but with a different seed mix than stipulated by the Conservation Commission. The Environmental Planner states that the New England Roadside Matrix Upland Mix shown on the revised plan would conflict with other plantings around the dumpster area, and recommends that this mix be replaced with either New England Conservation/Wildlife Mix or New England Coastal Salt Tolerant Grass Mix.

The revised plan set does not address Conservation Commission stipulations #2 and #3. Furthermore, the applicant has not made changes to the site lighting to comply with the Zoning Ordinance and Site Plan Review Regulations (which was the primary issue leading to postponement of the application at the December meeting). Therefore, these recommended stipulations are carried forward in the staff recommendations below.

#### Planning Department Recommendations

##### *A. Wetlands Conditional Use Permit*

*Vote to grant the conditional use permit with the following stipulations:*

1. *The New England Roadside Matrix Upland Mix shown on the Landscape Plan shall be replaced with either a New England Conservation/Wildlife Mix or a New England Coastal Salt Tolerant Grass Mix.*

2. *Maintenance as specified by the manufacturer shall be conducted on the proposed "First Defense" stormwater unit, and copies of a maintenance report shall be provided to the Environmental Planner annually.*

*B. Site Plan Approval*

- (A) *Vote whether to find that a waiver will not have the effect of nullifying the spirit and intent of the City's Master Plan or the Site Plan Review Regulations, and if so, to waive the following regulations:*

- (1) *Sec. 2.5.4 – Site Plan Specifications and Required Exhibits and Data, item 3.(j) – Outdoor Lighting (type and placement of outdoor lighting fixtures, and photometric plan).*
- (2) *Sec. 10.2 – Compliance with Zoning Ordinance (All projects shall comply with the outdoor lighting dark sky friendly standards provided in the Zoning Ordinance).*

[Note: An affirmative vote of six members of the Planning Board is required to grant a waiver.]

- (B) *Vote to grant the Site Plan Approval with the following stipulations:*

1. *The New England Roadside Matrix Upland Mix shown on the Landscape Plan shall be replaced with either a New England Conservation/Wildlife Mix or a New England Coastal Salt Tolerant Grass Mix.*
2. *The following notes shall be added to the Landscape Plan (Sheet No. 7 of 9), as required by Section 2.13.3 of the Site Plan Review Regulations:*
  - "1. This Site Plan shall be recorded in the Rockingham County Registry of Deeds.
  2. All improvements shown on this Site Plan shall be constructed and maintained in accordance with the Plan by the property owner and all future property owners. No changes shall be made to this Site Plan without the express approval of the Portsmouth Planning Director."
3. *The maintenance requirements for the "First Defense" stormwater unit shall be added to the site plan.*

[If the requested waiver from the dark-sky friendly requirement is not granted;]

4. *The site plan shall show replacement of the existing floodlights with fixtures complying with the dark sky friendly requirements of the Zoning Ordinance.*
5. *The Site Plan (Sheet 4 of 9) and Landscape Plan (Sheet 7 of 9) shall be recorded at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.*

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C. The application of **Mark McNally, Owner**, for property located at **21 Brewster Street**, requesting Site Plan Approval for the conversion of a former boarding house to 6 dwelling units with a footprint of 4,160 ± s.f. and gross floor area of 11,742 ± s.f., and the construction of a 6-bay attached garage with a footprint of 1,404 ± s.f., with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 138 as Lot 11 and lies within the General Residence C (GRC) District. (This application was postponed from the March 16, 2017, Planning Board meeting.)

Description

This application which is to convert a former boarding house to 6 independent dwelling units has already been before the Zoning Board of Adjustment and the Technical Advisory Committee. After discussion with the Technical Advisory Committee, the applicant proposed a modified off-street parking layout to improve internal circulation and access to the proposed garage. Although the application had previously received relief from the Zoning Board of Adjustment for building coverage and yard setbacks, the revisions required that the applicant return to the Zoning Board of Adjustment for the slight increase in footprint and height of the parking garage and for the dimensional relief required for the addition of parking lifts. The application is scheduled to go before the Zoning Board on Tuesday, April 18<sup>th</sup>.

Technical Advisory Committee Recommendation

At the February 28, 2017 public hearing, the Technical Advisory Committee voted to recommend this application to the Planning Board with the following stipulations to be completed prior to presenting to the Planning Board:

1. A note shall be added to the site plan that all parked vehicles on the property shall be parked completely within the garage with no outdoor parking permitted on the property and appropriate signage shall be added.
2. A note shall be added to the site plan that the garage will have mechanical ventilation with sensors as required by code. Additionally, the mechanical exhaust and sensor system must be on back up/generator power since it is a life safety issue. The generator location shall be shown on the site plan.
3. A note shall be added to the Site Plan indicating that trash and recycling containers shall be stored inside either the principal building or the garage.
4. The doors to the garage shall each be 18'6" wide.
5. The wall of the garage on the back of the property shall be adjusted to be parallel to the rear property line and/or otherwise modified to provide as much room as possible for maneuvering of vehicles into and out of that the garage.
6. The applicant shall consult with the Inspection Department to confirm whether appropriate egress is provided for the basement unit.
7. A note shall be added to the Site Plan indicating that there shall be no interior partitions in the garage.
8. A note shall be added to the Site Plan indicating that the stormwater management system will be maintained in perpetuity and that the management and maintenance plan shall be reviewed and approved by DPW.
9. A note shall be added regarding off-site snow removal procedures.
10. The drainage plans shall show that all roof runoff off the back of the garage will be captured and appropriately managed on-site.
11. There shall be no stormwater structures in the garage due to the risk of cross contamination with oil, etc.
12. The plans shall show that the City's DMH #6 will be moved uphill to be across from the driveway. There will be some small additional cost incurred by the City for this to happen. This additional cost will need to be added to the requisite stormwater permit.
13. Catch basin #3 and the surrounding pavement shall be constructed so that Catch basin #3 captures the runoff from the driveway before it runs across the City sidewalk.
14. TAC also suggested that the applicant consider modifying the overhang above the garage.

TAC also voted to recommend that the Planning Board grant a waiver to allow the electrical lines to be above ground as requested by the applicant.

On April 12, the applicant submitted revised plans, addressing items 1, 2, 3, 5, 7, 8, 9, 10, 11, 12, 13 and 14 above to the satisfaction of the Planning Department.

The following items have not been address and/or additional information is required from the applicant:

4. The TAC stipulation requested the garage doors to be a minimum of 18'6" wide. Sheet A3 shows the garage doors as being 17' wide. The TAC stipulation was provided to ensure there was adequate clearance for vehicles to enter and exit the parking spaces in the garage. The applicant should provide an explanation to the Planning Board verifying that 17' will be adequate for maneuverability into and out of the garage.
6. There is no verification in the revised submittals that the applicant consulted with the Inspection Department to confirm whether appropriate egress is provided for the basement unit.

Any remaining items have been included in the recommended stipulations of site plan approval listed below.

#### Planning Department Recommendations

- A. *Vote to grant the requested waiver to allow the electrical lines to be above ground.*

[Note: An affirmative vote of six members of the Planning Board is required to grant a waiver.]

- B. *If the Zoning Board of Adjustment has granted the required variances prior to the Planning Board meeting, vote to grant site plan approval with the following stipulations:*

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

1. *The Site Plan shall include the following notes:*
  - “1. *This Site Plan shall be recorded in the Rockingham County Registry of Deeds.*
  2. *All improvements shown on this Site Plan shall be constructed and maintained in accordance with the Plan by the property owner and all future property owners. No changes shall be made to this Site Plan without the express approval of the Portsmouth Planning Director.”*
2. *The Site Plan and Landscape Plan shall be recorded at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.*
3. *The applicant shall prepare a Construction Management and Mitigation Plan (CMMP) for review and approval by the City’s Legal and Planning Departments.*
4. *Applicant shall provide documentation regarding maintenance of the stormwater management system in perpetuity to be reviewed and approved by DPW.*
5. *The additional cost for relocating the City’s DMH #6 shall be added to the fee for the required stormwater permit.*
6. *The applicant shall provide confirmation from the Inspection Department that appropriate egress is provided for the basement unit.*



Conditions Subsequent (to be completed prior to the issuance of a Certificate of Occupancy):

1. The stormwater system shall be inspected during construction.

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### III. PUBLIC HEARINGS – NEW BUSINESS

A. Proposed amendment to the Zoning Ordinance, Article 12 – Signs, to exempt signs and other elements related to public parking in private parking lots from specific zoning standards when authorized under a permit from the Department of Public Works. (City Council referral)

Description

At its March 6, 2017, meeting the City Council passed third reading on an ordinance relating to signs for public parking in a private parking lot. This ordinance was enacted as an amendment to the City Ordinances, Chapter 7, Article I – Parking Meters, and requires that any sign located at the entrance to a private parking lot receive a permit from the Department of Public Works.

Signs on private property are also regulated Article 12 of the Zoning Ordinance. In order to avoid duplication of reviews and potential conflicts between different City ordinances and department, it is recommended that signs relating to public parking on private lots be exempt from zoning regulation if the public parking use is allowed through a permit from DPW. This exemption would apply both to signs at the entrance to the lot and to any signs in the interior of the lot that relate to public parking.

In addition to the sign standards, the Zoning Ordinance also provides for Historic District Commission review of new structures (including ticket kiosks and freestanding signs) in the Historic District. Therefore, it is also recommended that such structures be exempt from HDC review if the public parking use has been allowed through a permit from DPW.

A proposed amendment to the Zoning Ordinance has been drafted to implement these exemptions. The proposed amendment contains three provisions:

- Item A exempts site elements from HDC review when public parking in a private lot is authorized under a permit from the Department of Public Works.
- Item B exempts directional or informational signs from the requirement for a sign permit when public parking in a private lot is authorized under a permit from DPW.
- Item C corrects an existing conflict in the standards for an “information sign”. Currently, the definition of the term “information sign” sets the maximum sign area at 2 square feet while Section 10.1222 exempts such a sign if it is up to 4 square feet in area. The proposed amendment would establish 4 square feet as the maximum for both provisions.

Planning Department Recommendation

*Vote to recommend that the Zoning Ordinance be amended as proposed.*

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B. Proposed amendment to the Zoning Ordinance, Article 5A – Character-Based Zoning, Section 10.5A46 – Incentive Overlay Districts, to allow excess community space provided by a development to be credited for use in another development in the same Incentive Overlay District. (City Council referral)

#### Description

The Planning Department has drafted a proposed amendment to the Zoning Ordinance relating to zoning incentives in the North End and West End Incentive Overlay Districts. Proposed developments in these zoning overlay districts are eligible to build with greater building footprint (coverage) or height, or with reduced off-street parking, in return for providing either workforce housing or community space (which must be in the form of specific types itemized in the ordinance, such as parks, plazas, greenways, etc.). The proposed amendment creates a process for “banking” the community space incentives, in order to allow community spaces to be created before a specific development project has been identified. The amendment has been drafted to address a specific development proposal and a planned City open space project, but it also has broader potential applicability in the North End and West End.

#### *Background – Proposed Vaughan Street Hotel and Waterfront Park*

Cathartes is proposing to develop a new hotel at 215 and 299 Vaughan Street, two parcels that are currently occupied by Sanel Auto Parts and a municipal parking lot. Cathartes also owns an adjacent parcel that extends behind 3S Artspace to North Mill Pond. In order to gain additional building footprint area for the planned hotel, Cathartes proposes to develop the land on North Mill Pond into a public waterfront park, employing an existing provision at Section 10.5A43.43 of the Zoning Ordinance. (This project is the subject of a request for Design Review later in this agenda.)

The site of the proposed waterfront park is part of the North Mill Pond Path, a multi-use path that the Planning Department has proposed for connecting Market Street to Maplewood Avenue, with an eventual extension along the railroad tracks down to Bartlett Street. The portion of the North Mill Pond Path between Market Street and Maplewood Avenue is also shown in the North End Vision Plan prepared by TPUDC, and is identified in the Capital Improvement Plan for funding in Fiscal Year 2018. Cathartes’ proposed project, which includes the central portion of the path, is thus timely and would help the City to create this important amenity at lower public cost than without the developer’s involvement.

Under the applicable provision of the Zoning Ordinance, the Planning Board may grant a conditional use permit to allow an increase in building footprint from 20,000 to 40,000 square feet if at least 30% of the total property area is assigned and improved as community space. The site development area for the proposed hotel is approximately 1.33 acres, which would require 0.57 acre of community space to support the building footprint increase. The proposed waterfront park has a total area of about one acre and other proposed community spaces add another 0.13 acre, which together exceed the amount needed to support the hotel proposal. While Cathartes is willing to work with the City to move the North Mill Pond Path project forward, the developer does not want to give up the additional incentive potential that the excess land could provide for a future development. Thus, the developer and the City have a common interest in creating a mechanism to allow the transfer of land for public use to be credited to a future development project.

An exhibit prepared by the Planning Department and included in the packet for this meeting shows relevant excerpts of the North End Vision Plan and the North Mill Pond Path concept plan, along with two renderings of Cathartes' proposed community space. One of the renderings shows the full waterfront park development if banking of the incentives is allowed, and the other shows the portion of the park that would support the incentives for only the current hotel proposal on Vaughan Street.

### *Proposed Amendment*

To address both the City's interests and Cathartes' concerns, the Planning Department has drafted a proposed Zoning Ordinance amendment that would authorize the Planning Board to allow a contribution of community space to be credited toward a future development project that is as yet unidentified. The proposed amendment includes the following provisions:

- If authorized by a conditional use permit from the Planning Board, a developer may convey land to the City for community space and credit that land toward incentives for a future development project in the same overlay district.
- If the developer conveys the land without creating an improved community space (such as a park, plaza, greenway, etc.), the City may build the community space and charge the cost back to the future development project.
- The terms of the conditional use permit will be enshrined in an agreement between the developer and the Planning Department (similar to the agreements that are executed for any approved site plan or subdivision).

In internal discussions since the initial submission of the proposed amendment, Planning Department staff have identified an ambiguity in the amendment that should be clarified, relating to responsibility for design of the excess community space. It is recommended that the paragraph 10.5A46.23(2) be amended by inserting a new subparagraph (a) stating that the initial developer is responsible for design of the community space, subject to the approval of the Planning Board, as part of the application for the conditional use permit.

While the proposed amendment has been developed in order to allow a specific City project to be funded in part by a specific private development proposal, staff believe that it may have broader applications in the future. During the discussions about the character-based zoning for the West End, some residents raised concerns that the community space provisions could result in the creation of small unconnected green spaces on a project-by-project basis, but there was no mechanism allow multiple landowners to work together to provide larger, more meaningful public spaces. Given the right circumstances, the transferable development rights created by the proposed amendment could be that mechanism, facilitating the eventual creation of a neighborhood park or plaza for the West End.

### Planning Department Recommendation

*Vote to recommend that the proposed Zoning Ordinance amendment be further amended by inserting the following new subparagraph (a) in paragraph 10.5A46.23(2):*

- (a) The application for a conditional use permit to credit unimproved land in lieu of community space shall include a complete site plan and design for the proposed community space.*

C. The request of Raymond and Maryrose Richer for the City to release any interest it may have in the portions of two paper streets (Moffat Street and Woodworth Avenue) adjoining their property at 85 Woodworth Avenue. (City Council referral)

### Description

The owners of property at 85 Woodworth Avenue are requesting that the City release its interest, if any, in the portions of two “paper streets” abutting their lot. On March 20, the City Council voted to refer this request to the Planning Board for a report.

#### *Paper Streets: Dedication, Acceptance and Release*

A paper street is one which shows on a plan, especially the City tax map, but which does not exist on the ground. The most common way for that situation to come about is when a street is “dedicated” to public use by a landowner recording a plan showing the street. This happened frequently in the days before planning board approval was required for the recording of plans. A street so dedicated becomes a public street only when “accepted” by the City. The acceptance can be formal, often by vote of the City Council, or by implication based on City use and maintenance of the street.

For a street dedicated (shown on a recorded plan) before 1969, the dedication was automatically terminated if the City did not accept the street within 20 years.<sup>1</sup> The owners of lots fronting on those paper streets may have implied easements to use the paper streets for access and development, but such easements do not override local zoning and subdivision regulations.

As noted in the staff memorandum for the Board’s February meeting, the lots and streets in this area originated in a 1902 subdivision plan of “Prospect Park”. Several of the streets in the subdivision were partially constructed and accepted by the City, and a number of lots were developed. However, the area east of the Moffat Street cul-de-sac has remained undeveloped because of the extensive wetlands and challenging topography. As a result, the dedications of the paper streets in this area terminated in 1922. While the City is being asked to formally release any interest it has in these paper streets, such a vote is not technically required and would not necessarily have any impact, except to clarify the record.

#### *Moffat Street, Woodworth Avenue and Swett Avenue: Recent and Current Proposals*

The undeveloped lots and paper streets at the end of Swett and Woodworth Avenues have recently been the focus of attention by property owners and prospective developers:

- A developer is in the process of preparing a plan to consolidate five parcels and re-subdivide them into two building lots. The Zoning Board of Adjustment granted several variances for this project on February 21, and another variance application will be heard by the ZBA on April 18. It is anticipated that the application for subdivision approval may be submitted to the Planning Department shortly after the ZBA meeting, and may be on the Planning Board agenda in May or June. The subdivision proposal calls for extending

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<sup>1</sup> “In summary, if a paper street was dedicated by the owner between 1893 and 1969, the dedication ended automatically unless acceptance by the municipality occurred within 20 years.” *A Hard Road to Travel: New Hampshire Law of Local Highways, Streets, and Trails* (2015: New Hampshire Municipal Association), page 44.

Woodworth and Swett Avenues to the paper street portion of Moffat Street, and to construct a street within the Moffat Street layout to create frontage for the new lots. Because the City has never accepted this portion of Moffat Street and the dedication has therefore terminated, the consent of the abutting owners would be needed for the subdivision application to be considered by the Planning Board.

- Possibly in response to this proposed subdivision, the owners of abutting property at the end of the Moffat Street cul-de-sac petitioned the City Council to release paper street portions of Moffat Street and Woodworth Avenue that abut their two parcels. The Council referred this request to the Planning Board, which voted on February 16 to recommend in favor, and the Council accepted the Board's recommendation at its March 6 meeting. Because the Planning Department was aware of the subdivision proposal, it was careful to ensure that the release did not include the (paper) intersection of Woodworth Avenue and Moffat Street.

Now, another property owner is interested in obtaining a release of the paper streets abutting their property. The Richers have maintained the undeveloped portion of Woodworth Avenue in front of their house as part of their yard, and they are opposed to the proposed street improvements because of how it would affect the enjoyment of their home.

This request reflects a potential conflict between abutting property owners over the future of the land encompassed by the paper streets. However, it is important to note that there is no evidence that the City has any interest in these streets, and therefore the City's action on this request would probably have no practical effect other than to clarify this for the record.

The packet for this meeting includes two exhibits to provide context for this request:

- A map titled "Woodworth Ave / Moffat St / Swett Ave" prepared by the Planning Department, showing the relationship among the recent release of paper streets, the proposed subdivision, and the Richers' current request to release the paper streets abutting their property.
- A plan titled "Board of Adjustment Site Plan / Lot Line Adjustment Plan / Lot Consolidation Plan" showing the proposed roadways to be constructed between the current ends of Swett and Woodworth Avenues.

### *Municipal Interests*

The Planning Department requested input from the Department of Public Works on both proposals for the existing paper streets: i.e., (1) the extension of Woodworth and Swett and construction of Moffat to facilitate the proposed subdivision, and (2) the request by the Richers to release the portions of paper streets abutting their property. With respect to the subdivision plan, DPW Director Peter Rice has indicated that DPW "would not oppose the looping of the roadway assuming we ensure the layout allows for plowing and trash truck circulation." With respect to the Richers' request to release any the City's interest in the paper streets, DPW noted that this would permanently prevent the creation of a loop road, and therefore the City should work toward the following:

1. Create a permanent turn-around at the end of Swett Avenue big enough for trash trucks.
2. Cut down the hill on Swett Avenue by 2-3 feet to more closely meet standards.

3. Reserve the area at the end of Woodworth Avenue for snow storage.

The first two items could be required as conditions of subdivision approval, and the third could be done in connection with the release of the paper streets.

#### Planning Department Recommendations

The following two options are presented for the Board's consideration. As discussed above, staff do not believe that the City has any interest in these paper streets, and therefore neither of the options would likely have any impact other than to signal the City's interest (or lack thereof) in the potential construction of a new street.

##### Option 1

*Vote to recommend that the City release any interest it may have in the paper streets abutting 85 Woodworth Avenue, as shown on the exhibit titled "Woodworth Ave / Moffat St / Swett Ave", prepared by the Planning Department for this meeting, with the following exception:*

1. *The area between the end of the accepted portion of Woodworth Avenue and the intersection with Moffat Street shall be reserved for snow storage.*

##### Option 2

*Vote to recommend that the City not release any interest it may have in the paper streets abutting 85 Woodworth Avenue.*

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*It is recommended that Items D and E under Public Hearings – New Business be discussed together and voted on separately.*

*A motion is required to consider these two items together.*

D. The proposal by the City of Portsmouth to acquire from Peter Happny a sewer easement off Rock Street in connection with the construction of the new municipal parking garage; and to convey to Mr. Happny 2,275 ± s.f. of City-owned land adjoining Rock Street Park. (City Council referral)

E. The application of the **City of Portsmouth and Peter Happny, Owners**, for property located at **Rock Street Park and 66 Rock Street**, requesting Preliminary and Final Subdivision Approval (Lot Line Revision) between two lots as follows:

- (1) Map 138, Lot 60 decreasing in area from 62,807 ± s.f. (1.4418 acres) to 60,532 ± s.f. (1.3896 acres) with 71.50 feet of frontage on Rock Street and Sudbury Street.
- (2) Map 138, Lot 61 increasing in area from 12,508 ± s.f. (0.2871 acres) to 14,783 ± s.f. (0.3394 acres) with 47.50 feet of frontage on Brewster Street.

Said lots lie within the Municipal (M) district and Character District 5 (CD5) which have no minimum requirements for lot area or street frontage.

#### Description

##### *City Council Referral*

The new parking garage project has progressed through the land use process and the schematic design phase. The project consists of two major design elements; the roadway and associated utilities, and the garage structure itself. As anticipated, the roadway and utility design is nearly complete and the parking garage itself has just completed schematic design.

The relocation of the 48" brick box sewer around the parking garage and into the new street will be a significant part of the roadway and utility work. The original proposed design included keeping the realignment of that sewer line completely on City property. To do that requires the sewer line to include two 90 degree corners. While the sewer would work as designed, it is not an optimal solution to have such a steep angle on a sewer of this size.

Meetings with Peter Happny, an abutting property owner, led to discussions of a concept that would allow the City to construct the sewer line across his property in such a manner as to reduce the angle of the bends in the line. The sewer line would run through an easement across the Happny property.

In exchange for the sewer easement, Mr. Happny has requested that the City convey to him a narrow strip of City-owned land that runs along the front of his building. Mr. Happny currently occupies this land, which is separated from the Rock Street Park by a chain-link fence and a row of mature arborvitaes. A portion of this land is also subject to an easement to access the front of Mr. Happny's building. Thus, Mr. Happny currently has the legal right to use most of the land, and the conveyance would simply give him the fee title.

### *Subdivision Plan*

As noted above, the proposed lot line revision will establish a new lot line to reflect the use of land by Mr. Happny and will formalize his existing access easement. The lot line has been drawn to accommodate the planned cul-de-sac at the end of Foundry Place.

Two waivers from the Subdivision Rules and Regulations are needed: one relating to TAC review of the plan, and the other requiring the plan to show the entirety of the parcels being subdivided. Because of the negligible impact of the plan on adjacent parcels and roadways, and because the Department of Public Works has been closely involved in the preparation of the plan, the Planning Department advised the applicant that it would be unnecessary to meet these technical requirements.

### Planning Department Recommendations

1. *Vote to recommend that the City Council accept the sewer easement and grant the land conveyance as proposed.*

2. *Vote to waive the following requirements of the Subdivision Rules and Regulations:*

(a) *Sec. III.B.1.d., requiring Technical Advisory Committee review for a subdivision plan showing construction of a public sewer facility.*

(b) *Sec. V.5, requiring the subdivision plan to show the entire area proposed to be subdivided.*

[Note: An affirmative vote of six members of the Planning Board is required to grant a waiver.]

3. *Vote to grant Preliminary and Final Subdivision Approval with the following stipulations:*

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

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

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

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F. The application of **Alan G. Brady and Kendall E. Perkins, Owners**, for property located at **123 Clinton Street**, requesting Conditional Use Permit approval to create a two-bedroom, 750 s.f. detached accessory dwelling unit on the second story of a detached garage (to be constructed), with associated paving, lighting, and utilities. Said property is shown on Assessor Map 162 as Lot 41 and lies within the General Residence A (GRA) District.

#### Description

This is the first application submitted under the new zoning ordinance regarding accessory dwelling units (Sec. 10.814). The applicant proposes to construct an accessory dwelling unit on the second story of a detached garage to be constructed in conformance with all dimensional standards for the zoning district. Because the resulting unit will be a detached accessory dwelling unit (DADU), the provisions of Sec. 10.814.50 apply and those of Sec. 10.814.40 do not apply.

The ordinance provides that “all land use regulations applicable to a single-family dwelling shall also apply to the combination of a principal dwelling unit and an accessory dwelling unit.” There are two exceptions to this general rule. First, off-street parking must be provided for the ADU in addition to the two spaces required for a single-family dwelling (two spaces must be provided for an ADU with more than 400 sq. ft. gross floor area). Second, for a detached ADU, the minimum lot area per dwelling unit applies (for an attached ADU, only the minimum lot area applies).

The property is located in the General Residence A (GRA) zoning district, which has the following dimensional and intensity standards:

Minimum Lot Dimensions		Maximum Structure Dimensions	
Lot area	7,500 sf	Structure height	
Lot area per dwelling unit	7,500 sf	Sloped roof	35'
Continuous street frontage	100'	Flat roof	30'
Depth	70'	Roof appurtenance height	8'
Minimum Yard Dimensions		Building coverage	25%
Front	15'	Minimum open space	30%
Side	10'		
Rear	20'		

The lot contains 15,201 sq. ft., and thus has 7,500 sq. ft. of area per dwelling unit for the combination of the existing dwelling and proposed ADU. The site plan submitted with the application shows that the existing dwelling and proposed garage/ADU structure comply with all yard requirements with one exception: the existing dwelling protrudes into the front yard, with the front wall being 12.1 feet from the front lot line and the front porch being about 6 feet from the lot line. (Note: On the plan, the dimension line attached to the “12.1” value and pointing to the porch is an error and should instead point to the front wall of the house.)

The following table evaluates the proposed accessory dwelling unit against the standards in Sections 10.814.30 and 10.814.50.

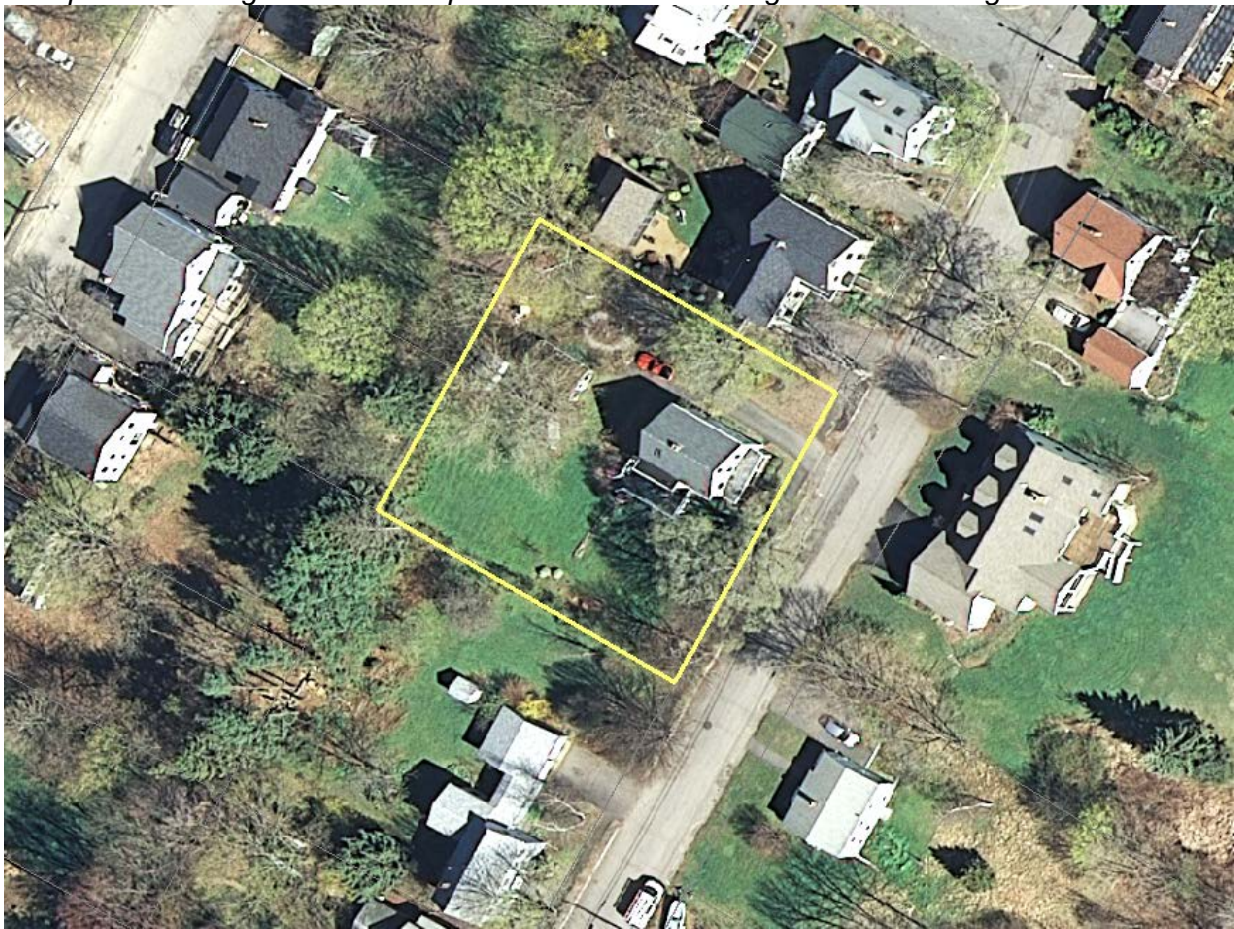
Standards	Proposed DADU
<i>10.814.30 All accessory dwelling units</i>	
.31 The principal dwelling unit and the accessory dwelling unit shall not be separated in ownership (including by condominium ownership).	The application states that units will remain in common ownership.
.32 Either the principal dwelling unit or the accessory dwelling unit shall be occupied by the owner of the dwelling. The owner shall provide documentation demonstrating to the satisfaction of the City that one of the units is his or her principal place of residence.	The application states that the applicant/owner will occupy one of the dwelling units. (Note: Ongoing documentation is to be provided as part of the annual certification process.)
.33 Neither the principal dwelling nor the accessory dwelling unit shall be used for any business, except that the property owner may have a home occupation use in the unit that he or she occupies as allowed or permitted elsewhere in this Ordinance.	The application states that neither dwelling unit will be used for any business except for possible home occupation by the owner.
.34 In addition to the two off-street parking spaces required for the single-family dwelling, one parking space shall be provided for an ADU up to 400 sq. ft. gross floor area, and two parking spaces shall be provided for an ADU larger than 400 sq. ft.	The site plan shows four parking spaces: two in the new garage and two outside.
<i>10.814.50 Detached accessory dwelling units</i>	
.51 In a General Residence district, the combination of the principal dwelling and the DADU shall comply with the minimum lot area per dwelling unit specified for the district.	The lot area exceeds 7,500 sq. ft. per dwelling unit.
.52 The DADU shall not have more than two bedrooms and shall not be larger than 750 sq. ft. gross floor area; ....	The proposed dwelling unit will have two bedrooms and a gross floor area of 750 sq. ft.
.54 The DADU shall be separated from the single-family dwelling by at least 20 feet.	The proposed garage/ADU structure will be 35 feet from the single-family dwelling.

In order to grant a conditional use permit for an ADU, the Planning Board must first make the following findings (Sec. 10.614.60):

Required Findings	Comments
1. Exterior design of the ADU is compatible with the existing residence on the lot through architectural use of building forms, scale and construction materials.	The proposed garage/ADU structure will be a gable-roofed building with two shed dormers, and thus not dissimilar to other buildings in the neighborhood. Compared to the existing dwelling, the new building will be 30% wider (27.4 ft. vs. 21 ft.), approximately the same depth, and about 6 feet shorter at the ridge line (25.5 ft. vs. about 31 ft.).
2. The site plan provides adequate open space and landscaping that is useful for both the ADU and the primary dwelling.	The site plan shows approximately 1,500 sq. ft. of open space along the side and rear of the proposed garage/ADU structure, with a large yard remaining to serve the existing dwelling.

Required Findings	Comments
<p>3. The ADU will maintain a compatible relationship to adjacent properties in terms of location and design, and will not significantly reduce the privacy of adjacent properties.</p>	<p>The proposed garage/ADU structure and driveway/parking area are in a traditional location for accessory residential parking, situated toward the rear of the lot. The closest existing building to the proposed structure will be a shed at the rear of 139 Clinton St. To buffer the new structure from abutting properties, 4 mature maple trees will be preserved (3 along the side lot line and one in the rear), and a row of 10 arborvitae will be planted along the rear lot line.</p>
<p>4. The ADU will not result in excessive noise, traffic or parking congestion.</p>	<p>Adequate off-street parking will be provided.</p>

*Aerial photo showing the relationship of the lot to surrounding lots and buildings:*



Planning Department Recommendation

*Vote to grant the conditional use permit as presented, with the following stipulation:*

1. *In accordance with Sec. 10.814.70 of the Zoning Ordinance, the owner is required to obtain a certificate of use from the Planning Department verifying compliance with all standards of Sec. 10.814, including the owner-occupancy requirement, and shall renew the certificate of use annually.*

G. The request of **299 Vaughan Street, LLC, and Sanel Realty Co., Inc., Owners**, and **299 Vaughan Street, LLC c/o Cathartes, Applicant**, for property located at **299 and 225 Vaughan Street and off Vaughan Street**, for design review under the Site Plan Review Regulations for the construction of a hotel with 143 guest rooms and 2,500± s.f. of commercial space, a 43,325± s.f. public park along the North Mill Pond waterfront (to be constructed in two phases), and a 2,869± s.f. public path from Vaughan Street to the waterfront park. Said properties are shown on Assessors Map 123 as Lot 15 and Assessors Map 124 as Lots 10 and 11, and lie within Character District 5 (CD5), the North End Incentive Overlay District, the Downtown Overlay District (DOD) and the Historic District.

#### Description

Cathartes proposes to construct a five-story, 143-room hotel with additional ground-floor retail uses on the Vaughan Street site currently occupied by a municipal parking lot and an auto parts business. This proposed development project previously came before the Planning Board for preliminary conceptual consultation at the Board's January 2017 meeting.

At the Planning Board's March 2017 meeting to review the submission and schedule this public hearing, Board members made a number of preliminary comments and observations, and the developer subsequently revised the design review plans to address some of these comments. The revised plans were not received in time to be sent to the Board, but electronic versions will be emailed to members and posted on the Planning Department website in advance of the April 20 meeting.

#### *Community Space*

As discussed above in this memo with respect to one of the proposed zoning amendments, the size of the proposed hotel (specifically, its footprint greater than 20,000 sq. ft.) requires that at least 30 percent of the area of the property be "community space" (Zoning Ordinance, Sec. 10.5A43.43(d)). Therefore, in addition to the hotel structure, the proposed project includes the creation of a public waterfront park, a walkway to the park from Vaughan Street, and a widened public sidewalk along Green Street.

If the 30% requirement is applied to the combination of all three lots owned by Cathartes, the community space requirement would be 0.75 acre (30% of 2.49 acres). However, Cathartes proposes to reduce the required amount of community space by subdividing the waterfront lot, reserving a portion of the lot to potentially serve as community space for future development in the immediate vicinity. It appears that about 1.89 acres of total lot area is required to accommodate both the development and the required community space, so about 0.60 acre could be split off into a separate parcel. The plan reviewed by the Board at its March meeting shows this "Parcel B: Potential Future Waterfront Park Community Space" as being 32,186 sq. ft. (0.74 acre).

#### *Scope of Review*

Under the State statute (RSA 676:4,II), the design review phase is an opportunity for the Planning Board to discuss the approach to a project before it is fully designed and before a formal application for Site Plan Review is submitted. The Design Review phase is nonbinding on both the applicant and the Planning Board.

Although the State statute calls this preapplication phase “design review,” it does not encompass review of architectural design elements such as façade treatments, rooflines and window proportions. Rather, it refers to site planning and design issues such as the size and location of buildings, parking areas and open spaces on the lot; the interrelationships and functionality of these components, and the impact of the development on adjoining streets and surrounding properties.

There is no application before the Board at this point, and therefore no substantive action is called for. Instead, after the public hearing and after providing comments to the developer, the Board’s action is to “determine that the design review process of [the] application has ended.”

#### *Additional Required Approvals*

In addition to site plan approval, the proposed project will require the following land use approvals and permits:

##### *Planning Board*

- Subdivision approval to revise the lot line between the hotel site and the waterfront park, and potentially to divide the waterfront park parcel into two lots
- Wetland conditional use permit for work within 100 feet of North Mill Pond (hotel and waterfront park)
- Conditional use permit for increased building footprint

##### *Historic District Commission*

- Certificate of Approval

##### *City Council*

- Acceptance of land and/or easements for community space (waterfront park, gateway path, widened sidewalk) and realignment of Green Street

##### *NH Department of Environmental Services*

- State wetland permit
- State shoreland permit

#### Planning Department Recommendation

*Once the Board is satisfied with the information provided and has given the developer its input, vote to determine that the design review process of the application has ended.*

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