

**MINUTES  
REGULAR MEETING  
PLANNING BOARD  
PORTSMOUTH, NEW HAMPSHIRE  
CITY COUNCIL CHAMBERS**

**7:00 P.M.**

**DECEMBER 19, 2002  
CITY HALL, MUNICIPAL COMPLEX, 1 JUNKINS AVENUE**

**MEMBERS PRESENT:** Kenneth Smith, Chairman; Paige Roberts, Vice-Chairman; Richard A. Hopley, Building Inspector; Thaddeus J. "Ted" Jankowski, Deputy City Manager; John Sullivan; Raymond Will; Donald Coker; and, John Ricci, alternate

**MEMBERS EXCUSED:** Brad Lown, City Council Representative; and, George Savramis

**ALSO PRESENT:** David M. Holden, Planning Director

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**6:30 P.M. Portsmouth Room -- Presentation to Ernie Carrier**

A reception was held in the Portsmouth Room in honor of Ernie Carrier's service on the Board. Presentations were made by the Chair to Mr. and Mrs. Carrier.

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Prior to opening the meeting, the Chair publicly thanked Mr. Carrier for his years of service as a member and Vice-Chair of the Planning Board and wished him and Mrs. Carrier Happy Holidays.

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**I. OLD BUSINESS**

**A. 566 Greenland Road** – request to erect a fence on City-owned property (**This request was tabled at the Board's November 21, 2002, meeting to this meeting.**)

Mr. Will moved to take the request off the table and Mr. Sullivan seconded the motion that passed unanimously. Mr. Holden explained that in reviewing the possibility of a licensing agreement, some concerns arose in relation to the right-of-way. He recommended that the request be referred to the Traffic/Safety Committee for a report at the Board's next meeting. Mr. Will moved to retable the request to the Board's January 23, 2003, meeting to allow for a review and report back from the Traffic/Safety Committee. Mr. Hopley seconded the motion that passed unanimously.

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**II. APPROVAL OF MINUTES**

**A. November 21, 2002 meeting**

Mr. Sullivan moved to approve the minutes as submitted. Mr. Jankowski seconded the motion that passed unanimously.

### III. PUBLIC HEARINGS

A. The application of the **Estate of Jay M. Smith** for property located at **49 Sheafe Street** wherein Preliminary and Final Approval is requested for the creation of two lots from an existing lot. Proposed Lot 21A would have a lot area of 3,919 s.f. ± with frontage off Sheafe Street and Proposed Lot 21B would have a lot area of 1,238 s.f. ± with frontage off Custom House Court. Said property is shown on Assessor Plan U-7 as Lot 21 and lies within the Central Business B and Historic A districts. Plat plans are recorded in the Planning Department as 17.1-02.

The Chair read the notice into the record and called for speakers.

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

Attorney Bernard W. Pelech addressed the Board and stated that he was present on behalf of the Estate of Jay M. Smith. He stated that Board members might be familiar with the property in that it was the subject of an approved lot line relocation in 1998. The request before the Board is to free up this parcel of land. Attorney Pelech went on to state that the request meets each and every requirement of the *Zoning Ordinance* adding that the request is being made so that the lot could be marketed to interested parties.

Attorney Pelech explained that in 1998 the parcel was removed from Karen's Ice Cream parcel of land and added to Mr. Smith's land at 49 Sheafe Street. Attorney Pelech reminded the Board that a boundary dispute existed at that time between Mr. Smith and his abutter, Mr. Russo that was not resolved by the lot line relocation in 1998. Attorney Pelech offered that Mr. Russo was in support of this application commenting that in 1998 he (Attorney Pelech) fought with Attorney McGee tooth and nail over the lot line relocation proposed at that time (the dispute has been subsequently resolved).

Attorney Pelech pointed out that there is a garage situated on the site in question adding that the garage doors are not accessible from Custom House Court and are not accessible from Mr. Smith's other property at 49 Sheafe Street. The site fronts on Custom House Court and has been accessed from Custom House Court for many, many years. The chain of title indicates that a free-standing garage/workshop has been situated on its own separate lot.

Attorney Pelech further pointed out that the Central Business district has no frontage requirement, no minimum size requirement, no lot size requirement and no off street parking requirement. He referred to a State statute regarding access and commented that frontage and access would be from Custom House Court adding that until his death, Mr. Smith went from Custom House Court to this property on a daily basis.

Attorney Pelech went on to state that when Mr. Smith was around, the lot line relocation was a simple matter. Now that Mr. Smith is no longer with us and Karen's Ice Cream property has been sold, the estate appraiser discovered that the building that sits upon this lot is in dire need of repair and that it would be better off subdivided from the main residence at 49 Sheafe Street.

Attorney Pelech informed the Board that he had with him full size, stamped plans from Easterly Surveying adding that he was willing to sit down with the department to address their concerns. He stated that he could not understand the department's remarks that the request would add to street congestion and overcrowding of land offering that the site already exists.

Mr. Will wondered if any negotiations with Mr. Russo would help to alleviate the frontage issue on Custom House Court. Attorney Pelech responded by stating that no agreement had been

reached as yet adding that both Attorney McGee and his client (Mr. Russo) support the request before the Board adding that Karen Wiese supports the application as well.

Mr. Will stated that he would have to agree with the department until he had a larger plan in front of him and felt that a tabling motion might be in order.

Mr. Ricci inquired if a lot line relocation had been considered between Mr. Russo or somebody else. Attorney Pelech offered that it had been considered adding that he has three abutters who would like to buy the lot besides two other people who are interested in purchasing the lot. He pointed out that he, as executor of the estate, must sell the property to the highest bidder by putting it up for auction or listing it for sale. The suggestion was made that a Purchase and Sale Agreement could be entered into subject to a lot line relocation. Attorney Pelech responded that he is charged with liquidating Mr. Smith's estate by the middle of February/beginning of March.

Mr. Coker inquired as to the use of the garage. Attorney Pelech responded that it was being used for storage. Mr. Coker inquired if it had been used for auto parking. Attorney Pelech responded in the affirmative by stating many years ago; however, since Mr. Smith has owned the property, the garage has been used for storage by Mr. Smith or Karen's.

Mr. Coker inquired if it would be reasonable to assume that the lot is a buildable lot. Mr. Holden stated that Attorney Pelech would probably respond in the affirmative. Mr. Coker commented that as an automobile could not access the site, perhaps a determination should be had by the City Attorney. Mr. Holden informed Mr. Coker that the plan before the Board had been discussed with the City Attorney adding that he (Mr. Holden) stood by his memo and was prepared to address it.

Mr. Ricci asked if the application before the Board was for a lot line relocation. Mr. Holden responded that the department does not make a differentiation between a lot line relocation and a subdivision.

James Russo of 97 Daniel Street addressed the Board and stated that he was not opposed to the request adding that the building is a total eyesore. He felt that it would be in everyone's best interests to fix it up or rebuild it or whatever.

The Chair made three calls for speakers. Seeing no one rise, the Chair declared the Public Hearing closed and asked the Board's pleasure.

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

Mr. Holden stated that it was his understanding that the request was being made to create a lot that may be sold if subdivided. He remarked that Attorney Pelech had made the comment that the lot is unaccessible now; therefore, the lot would be unaccessible later. Mr. Holden went on to state that the garage is a problem now and could be demolished now. He added that there is an issue over a right-of-way and access to the area; that the request does not ring true as to what the Board should be doing. Mr. Holden continued on by stating that a plan should be filed indicating the interest expressed in the land.

Mr. Hopley reiterated the suggestion of using a Purchase and Sales Agreement. Attorney Pelech responded that there is no plan to allocate out any land adding that his comment regarding accessibility was that there was no access through the garage door.

Mr. Coker stated that he was not comfortable with the request before the Board; that there is one piece that bothers him that being access. He added that if the lot was incorporated into another

piece of abutting land, that would be one thing. Mr. Coker stated that he would support the department's memo.

Mr. Coker moved to deny the request. Mr. Will seconded the motion.

Mr. Sullivan inquired of Mr. Holden as to whether the applicant had met all of the City requirements. Mr. Holden responded in the negative stating that it was premature to subdivide the lot at this time because of the reasons set forth in the memo. Mr. Holden further responded by pointing out that the Central Business District does have a minimum lot area requirement.

Mr. Smith inquired as to how much frontage the lot would have on Custom House Court. Attorney Pelech responded by stating between five and seven feet and that such would meet the requirement of the State statute as well as the City's own *Zoning Ordinance*. He went on to state that Mr. Russo has a Parker survey that shows a 6.5' street line.

Mr. Holden inquired of Attorney Pelech what would need to be done if this was a lot right now and an abutter wanted to come in for a lot consolidation. Attorney Pelech replied that a consolidation deed would have to be filed with a notice sent to the Planning Department.

Mr. Holden expressed his concern that the Board was being asked to take a considerable risk. Attorney Pelech responded that he couldn't sell unless it is a free-standing lot. Mr. Holden stated that he would be glad to sit in on any meetings.

Mr. Coker offered that having been involved in the real estate business, that the lot could be sold contingent upon. Attorney Pelech responded by stating that he wouldn't be able to do such in a timely fashion.

Mr. Will stated that it seemed to him that the reason the application was before the Board was for reasons of speed; that it was not the Planning Board's concern whether or not something was done in a timely fashion; that he would feel a lot more comfortable with some sort of lot line change rather than the configuration presently before the Board.

The Chair stated that he would vote in favor of the motion; that he was not comfortable with the amount of frontage adding that he understood Attorney Pelech's position that separation would increase the number of interested buyers.

The Chair called the question. The motion to deny the application passed unanimously based on the following:

1. That is premature to subdivide at this time;
2. That the Board encourages the applicant to explore other options; and,
3. That a subdivision application addressing these concerns could be one viable option.

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B. The application of **Michael Brigham** for property located at **487 Cutts Avenue** wherein Preliminary Subdivision Approval is requested for the creation of eight lots from an existing lot. The lots will range in size from 15,000 s.f. ± to 21,678 s.f. ± with frontage off Michael Succi Drive, Chase Drive or a proposed cul-de-sac. Said property is shown on Assessor Plan 210 as Lot 26 and lies within a Single Residence B district. Plat plans are recorded in the Planning Department as 18.1-02.

The Chair read the notice and called for speakers.

**SPEAKING TO THE APPLICATION:**

Attorney Bernard W. Pelech addressed the Board and stated that he was present on behalf of the applicant. He stated that the property was one with which the Board was familiar in that it underwent a fourteen to sixteen month process in an attempt to put an Assisted Living Facility on the site. The request before the Board is for Preliminary Approval for an eight lot subdivision with a cul-de-sac having access off Chase Drive. The existing home will be relocated, demolished or re-sited. In other words, the applicant is desirous of retaining a three dwelling unit structure. Attorney Pelech stated that other than that, all requirements have been met.

Attorney Pelech asked that the Planning Board grant Preliminary Approval pending approval from the Zoning Board or table the request pending Zoning Board approval of the creation of three dwelling units on lot #4.

Mary Karkota Clark of 461 Cutts Avenue expressed her concern about the existing water line. She wondered if the back access road would be closed off and expressed her concern about blasting. The Chair offered that there are strict regulations in the City that will cover the blasting issue adding that Public Works would take care of that issue as well as the water issue.

Kelly Boston of 465 Cutts Avenue stated that she has a house that follows the existing driveway. She stated that her main concern is the traffic coming up Cutts Avenue.

Attorney Pelech responded by stating that the primary access would be through the new roadway (cul-de-sac); however, there is no intent to abandon the driveway adding that there may be a need for a easement over Lot 3; that the existing driveway may be used for emergency access only; that the use of the existing driveway would be up to the Traffic/Safety Committee as part of the site review process.

Attorney Pelech went on to state that Tom Cravens of the Water Department had indicated that one of the problems with the water line had been solved since the Benchmark proposal; that being the spikes in the water pressure in the area; however, there is still a problem with low pressure and flow; that the applicant was considering replacing the existing pipe with a 12" pipe. The cost of replacing 1,800' of pipe may be prohibitive. Alternatives would be looked at; such as, the drilling of wells.

Mr. Will noted that lots 6, 7 and 8 could be accessed by Michael Succi or Chase Drives and, in essence, would not need to be accessed by the existing driveway. Attorney Pelech responded that it is possible that only two lots would be accessed by said driveway.

Mr. Ricci inquired if the applicant had looked at a drainage analysis or drainage easements. The Chair reminded Mr. Ricci that such items would come up under the Site Review process.

Susan Petroulis of 355 Chase Drive stated that the cul-de-sac would be right next to their property line. She stated that there is a lot of ledge in the area that is being discussed for a road and expressed her concern about blasting even though she understood that the City has rules and regulations covering blasting procedures. Mr. Holden concurred that blasting would be a concern. He reiterated that the process would involve the Public Works Department. He went on to state that assuming a Technical Advisory Committee review, there would be at least three or four more Public Hearings before the project could go forward. He assured Ms. Petroulis that the developer would have to meet certain blasting requirements.

Ms. Petroulis stated that when the Assisted Living Facility was being considered, it was her understanding that it was stated that some of the land may be owned by the State. The Chair commented that he did not have the answer on how that would pertain to the project at hand.

The Chair made three calls for speakers. Seeing no one rise, the Chair declared the Public Hearing closed.

**DISCUSSION AND DECISION OF THE BOARD:**

Mr. Holden asked Attorney Pelech to clarify the intent with the apartment house. Attorney Pelech stated that they would be seeking a Variance from the Zoning Board to allow three dwelling units on Lot 4; that is, the intent is to demolish the existing structure and reconstruct three townhouse units. Mr. Holden stated that in such a case, the encroachments on lots 7 and 8 would be eliminated. Attorney Pelech responded by stating, "definitely".

The Chair asked the Board's pleasure.

Mr. Hopley moved to table the application to the Board's January 23, 2003, meeting to allow for Board of Adjustment action on the request to relocate and reconstruct a three unit residential structure on one of the proposed lots. Mr. Will seconded the motion that passed unanimously.

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C. The application of **505 Lafayette Road, LLC** for property located at **605 Lafayette Road** wherein site plan approval is requested for the construction of a one-story 1,500 s.f. ± addition to the rear of the existing building and a complete second story addition (4,000 s.f. ±) with related paving, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 229 as Lot 9 and lies within a General Business district.

Jessica Winston of Millette, Sprague & Colwell addressed the Board and presented the proposal to construct a 1,500 s.f. addition to the rear of the existing building and a 4,000 s.f. addition to the second story. The necessary Variances have been granted by the Board of Adjustment. No additional utilities are required. The existing utilities will remain unchanged. The increase in the parking calculation has been accommodated by two extra spaces. Some of the traffic islands on site will be reconfigured to allow for adequate passage around the building and passage through the site.

The application was tabled at the November 5<sup>th</sup> Technical Advisory Committee meeting to allow for further examination of concerns regarding the configuration of the traffic islands entering the site. An on-site visit by the Traffic/Safety Committee reviewed those changes as well as the changes made to the internal island on site. The Committee recommended approval. On December 3<sup>rd</sup>, the Technical Advisory Committee recommended approval of the proposed additions with the new configuration of the islands.

Mr. Coker brought up the subject of granite curbing versus the proposed use of bituminous curbing and wondered if it was within the purview of the Planning Board to require granite curbing. Mr. Holden responded by stating, "probably not" although the Board could strongly urge the use of same. Mr. Holden pointed out that the City is interested in having its areas protected by granite noting that bituminous curbing usually lasts about a year before being destroyed by snow plows or whatever.

Ms. Winston indicated that her client would like to use bituminous curbing at this time as such would match the curbing on adjacent sites adding that her client has agreed to keep the curbing in good condition.

Mr. Will felt that the concern was a legitimate one pointing to the fact that bituminous curbing is customarily destroyed by vehicles running over them or by snow plows. He added that he certainly applauded the applicant in his attempts to improve the site. Mr. Will wondered if there was anything between asphalt and granite. Mr. Holden reminded the Board that the site in question doesn't involve the City's interests; that bituminous curbing is prevalent in the area being discussed.

Ms. Winston offered that the curbing would be painted bright yellow adding that the applicant has tried to address all issues. Ms. Winston assured the Board that the applicant wanted the site to look nice.

Mr. Coker inquired into the mechanism to be used to ensure that the curbing is kept in good repair. Mr. Holden suggested that the Board let the applicant do as he has proposed; that if the curbing should fall into disrepair, then the repair would be done in granite.

Mr. Sullivan offered that there is something in between called reinforced concrete. He suggested that if the Board went with Mr. Holden's recommendation, that a note so indicating be placed on the plan so that there would be something to "sink teeth into". Also any new purchaser of the site would know about the stipulation.

The Chair reminded Ms. Winston to have the snow storage area indicated on the plan.

The Chair made a call for speakers. Seeing nobody in the audience, the Chair declared the Public Hearing closed.

**DISCUSSION AND DECISION OF THE BOARD:**

Mr. Coker moved to approve the site plan subject to the following stipulations:

**From the Technical Advisory Committee:**

- 1. That the guard rail detail indicate 6' x 8' posts, 4' x 10' rails and a 30" height. The amended site plan to be approved by David Desfosses, Engineering Technician with the Public Works Department.

**From the Planning Board:**

- 1. That a note be added to the site plan indicating that if the proposed bituminous curbing enters into a state of disrepair, then the curbing shall be replaced with granite curbing; and,
- 2. That a note be added to the site plan that any snow storage will be trucked off site.

Mr. Will seconded the motion that passed unanimously.

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**IV. CITY COUNCIL REFERRALS/REQUESTS**

**A. Request to rezone property off McDonough Street**

Attorney Pelech informed the Board that he had read the department's memo indicating that he would have the Informational Matrix available under the schedule set forth in the memo. Mr. Holden stated that the Board would then direct the department to prepare its own report that would be submitted in February and that a work session of some sort could be held in February or March. No motion was required.

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**V. NEW BUSINESS**

**A. 1801 Woodbury Avenue -- Request for one year extension of site plan approval**

Mr. Holden indicated that this was a first-time request for an extension. Mr. Sullivan so moved. Mr. Coker seconded the motion that passed unanimously.

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**B. Scheduling of Special Planning Board meetings**

Mr. Holden informed the Board that the regular meeting of the Board had been moved to the Fourth Thursday of the month (January 23<sup>rd</sup>); that the City was prepared to move forward on the library project. Due to the complexity of the project and the amount of interest shown in the proposal, it has been suggested that a work session with administrative staff be scheduled for January 16<sup>th</sup> with a Public Hearing to be held on February 6<sup>th</sup>.

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**Items not on the Agenda:**

**Master Plan Process**

Mr. Holden informed the Board that a kick-off meeting had been scheduled with the Study Circle Group to introduce the members and to explain how the process would move along. The meeting has been scheduled for January 15<sup>th</sup> at 7:00 p.m. However, he was not sure of the location. Mr. Holden commented that it looked like an exciting time in that some 300 people had indicated an interest in being part of the Study Circle.

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**National Gypsum Air Quality Permit**

Mr. Holden read into the record a memo from Peter Britz, the City's Environmental Planner, informing them of a Public Hearing to be held on January 14<sup>th</sup> in Conference Room A at 7:00 p.m.

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**VI. ADJOURNMENT** was had at approximately 8:05 p.m. after Board members exchanged wishes for Happy Holidays.



Respectfully submitted,

Barbara B. Driscoll  
Acting Secretary for the Planning Board

These minutes were approved by the Planning Board at its January 23, 2003, meeting.