

**MINUTES OF MEETING
REGULAR MEETING
PLANNING BOARD
PORTSMOUTH, NEW HAMPSHIRE**

7:00 P.M.

**CITY COUNCIL CHAMBERS
CITY HALL, MUNICIPAL COMPLEX, 1 JUNKINS AVENUE**

MAY 18, 2006

MEMBERS PRESENT: John Ricci, Chairman; M. Christine Dwyer, City Council Representative; Jerry Hejtmanek, Vice-Chairman; Cindy Hayden, Deputy City Manager; Richard A. Hopley, Building Inspector; Donald Coker; George Savramis; Anthony Coviello; and alternates Paige Roberts and Timothy Fortier

MEMBERS EXCUSED: Raymond Will

ALSO PRESENT: David M. Holden, Planning Director; and, Lucy E. Tillman, Planner I
Peter Britz, Environmental Planner

.....

I. PUBLIC HEARINGS

A. The application of **Bacman Enterprises, Inc., Owner**, for property located at **140 Edmund Avenue**, wherein a Conditional Use Permit is requested as allowed in Article VI, Section 10-608(B) of the *Zoning Ordinance* to improve on site parking spaces, retaining walls and landscaping within an Inland Wetlands Protection District. Said property is shown on Assessor Plan 220 as Lot 81 and lies within a Single Residence B district. (This application was tabled at the April 20, 2006 Planning Board Meeting.)

The Chair read the notice into the record.

Mr. Hopley made a motion to take the application off of the table. Deputy City Manager Hayden seconded the motion. The motion passed unanimously.

SPEAKING TO THE APPLICATION:

Attorney Bernard Pelech appeared on behalf of the Applicant. Dr. Paul Bacon was present. Attorney Pelech stated that the site is located at 140 Edmond Avenue and has been an existing Chiropractor office for over 20 year. They are looking to reconfigure the parking and an area constructed within the 100 foot buffer. Edmund Avenue creates a natural barrier between the property and the wetlands. There is an asphalt parking area that will be removed and returned to an impervious gravel surface. They are changing it from hot top to gravel. They are also placing a vegetative strip to serve as an infiltration strip, to allow run off to accumulate in the infiltration basin. The Conservation Commission endorsed the plan. One condition was that the City owned property, which is a gravel area, should be delineated so cars will no longer park there. They will put up a 24' fence, with boulders and wetland plantings to prohibit parking. There was correspondence in the packet regarding the plantings. They are basically saying they have a 1,200 s.f. reduction in impervious surface and are making the situation much better than what is there now.

Mr. Coker did not have a copy of the letter which Attorney Pelech referenced as being in his packet.

Attorney Pelech provided a copy for the Board to review.

The Chair asked if anyone else was present from the public, wishing to speak to, for, or against the petition. Seeing no one rise, the public hearing was closed.

DISCUSSION AND DECISION

Vice-Chairman Hejtmanek made a motion to approve. Mr. Coviello seconded the motion.

Deputy City Manager Hayden asked if the Planning Staff had reviewed the proposed plantings? Peter Britz indicated that he saw the letter and felt that it looks good. He is excited that they are restoring the City parcel.

Mr. Coker asked Mr. Hopley if the Inspection Department does an inspection to make sure that everything is completed according to the plans? Mr. Hopley stated that was under the jurisdiction of the Department of Public Works. Mr. Holden added that there will be a bond posted with the City and a site inspection will be done by the Department of Public Works before returning the bond to the applicant.

The motion to approve passed unanimously.

.....

B. The application of **Stephen Kelm, Owner**, for property located at **46 State Street**, where in Preliminary and Final Subdivision approval is requested to subdivide one lot into two lots with the following: Proposed Lot A having 1,570 ± s.f. and 22.41' of continuous street frontage on State Street and Proposed Lot B having 2,720 ± s.f. and 38.10' of continuous street frontage on State Street, and lying in a zone where a minimum lot area of 1,000 s.f. and no street frontage is required. Said property is shown on Assessor Plan 105 as Lot 11 and lie within the Central Business B District, Downtown Overlay District and Historic District A. (Plat plan is on file in the Planning Department Office and is identified as Plan #06-01-06). (This application was tabled at the April 20, 2006 Planning Board Meeting.)

The Chair read the notice into the record.

Deputy City Manager Hayden made a motion to take the application off of the table. Mr. Savramis seconded the motion. The motion passed unanimously.

Mr. Coviello indicated that the applicant has been a past client of his firm so he stepped down from this hearing.

SPEAKING TO THE APPLICATION:

John Chagnon, of Ambit Engineering, requested that this matter be withdrawn and they will present the following application.

Deputy City Manager Hayden made a motion to table to a time indefinite. Mr. Hopley seconded the motion.

The motion passed unanimously.

.....

C. The application of **Stephen Kelm, Owner**, for property located at **46 State Street and March Twenty Two, LLC, Owner**, for property located at **58 State Street**, wherein Preliminary and Final Subdivision approval (Lot Line Revision) is requested between two lots having the following: Lot 11 as shown on Assessor Plan 105 decreasing in area from 4,303 s.f. to 2,733 s.f. and decreasing in continuous street frontage off of State Street from 60.51' to 38.10' and Lot 12 as shown on Assessor Plan 105 increasing in area from 1,810 s.f. to 3,380 s.f. and increasing in continuous street frontage off of State Street from 26.00' to 48.41'. Said lots lie in a zone where a minimum lot area of 1,000 s.f. and no continuous street frontage is required. Said properties are shown on Assessor Plan 105 as Lots 11 & 12 and lie within a Central Business B and Historic District A District.

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

John Chagnon, of Ambit Engineering, addressed the Board on behalf of the owners. They propose to relocate a lot line between the two lots of #46 & #58 State Street. They will move the lot line which currently runs along the building line of #58 and move it over so it runs along the building line of #46. This project is an area where there is an existing driveway onto State Street which provides access to a covered parking area. As part of the proposal, there will be an access easement to access the parking area from Court Street. Their packet included an easement deed from the abutter and there was a plan included showing the easement as well as a rear elevation looking at the back from Court Street. This was part of an HDC application which was approved in May. Mr. Chagnon provided additional elevations showing the new buildings from different views. They will demolish #58 and construct a new building. This project is consistent with the Master Plan with residential use on the upper floors, on site parking underground and a curb cut will be closed creating one additional on street parking space.

Mr. Chagnon indicated that the Planning Department expressed some concerns in their Memorandum. They are asking for preliminary approval tonight to allow them to work with the City staff and TAC Committee. The Department's first concern is that the tax map shows a structure across the whole lot. What happened was that to the rear of #58 there was a one story structure which is now gone. It was taken down as part of an application that came before the City. The existing building is not structurally safe and they have HDC approval to demolish it.

The second concern is that they were to demolish the building and deck however Mr. Chagnon confirmed that they have HDC approval to do that.

The third concern was the zero side setback. They are aware that they would have to follow building codes and the proposed structure will still meet those codes.

The fourth concern is that the access and egress is possible now that the line is moved to the east and Mr. Chagnon agrees they need to look at that during the planning process.

The fifth concern is regarding structures and the demolition. Easements need to be identified and revised due to the re-configuration of the lot line.

The sixth concern is the curbcut onto State Street. Mr. Chagnon agrees that just doing this action could potentially have other ramifications. They will not use the driveway to go from Court to State Street and they will work that out.

The seventh concern is the relocation of access to Court Street and the ramifications. He agrees they need to study this and TAC would be the place to do that.

Mr. Chagnon requested preliminary approval so that they can move forward with their Site Review application. If they are unable to move forward, the next Planning Board meeting is after the site review deadline for next month so it would cause a two month delay.

Deputy City Manager Hayden asked about item #7 and what if they grant preliminary and TAC thinks it is horrible to go through to Court Street? She asked if that would be a “project killer”? Mr. Chagnon felt that two things could happen. This plan would not be desirable or the project could be reconfigured with no underground parking, as it’s not a requirement.

Ms. Roberts asked about the rear elevation which was included in their packet. Is this the one which was approved by HDC with the garage door opening facing Court Street. Mr. Chagnon confirmed that it was.

The Chair asked if anyone else was present from the public, wishing to speak to, for, or against the petition.

DISCUSSION AND DECISION

Mr. Holden stated that Mr. Chagnon had given a good explanation however the Department still has concerns with items #6 & #7. Easements are important and how the driveway works is pertinent. He recommended keeping the public hearing open and table it so that the applicant and City staff can continue to meet. If this were at TAC in this form, the lots are not in their final form. He believed Lot 6 should be part of this application and at this point it’s not included. Mr. Chagnon has been forthcoming and a number of concerns were addressed but at this point the Department still recommends that this be tabled.

Mr. Coker asked, procedurally, by leaving the public hearing open, that doesn’t effect any deadlines that Mr. Chagnon talked about?

Mr. Holden confirmed that it allows the clock to keep running. If it were tabled, they could re-advertise in June and keep the project on schedule. TAC issues are not a concern at this point for the Board.

Deputy City Manager Hayden felt those were good points. She had concerns with #6 and #7.

Deputy City Manager Hayden made a motion to table to June 15th. Vice Chairman Hejtmanek seconded the motion.

Mr. Holden suggested that the applicant meet with staff to address items and amend the application if necessary and come back in June with a Department recommendation.

The motion to table passed unanimously.

.....

D. The application of **Strawbery Banke, Inc., Owner**, for property located at **17 Hancock Street**, wherein Preliminary and Final Subdivision approval is requested to subdivide one lot into two with the following: Proposed Lot 000 having 6,245 ± s.f. and 100’ of street frontage on Hancock Street and Proposed Lot 001 having 4,116 ± s.f. and 83.49’ of street frontage on Hancock Street and 43.57’ of street frontage on Washington Street, and lying in a zone where a minimum lot area of 7,500 s.f. and 100’ of street frontage is required. Said property is shown on Assessor Plan 103 as Lot 88 and lies within a Mixed Residential Office and Historic District A District. The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Attorney Peter Loughlin spoke on behalf of Strawberry Banke. Also present was Mr. Yerdon, President of Strawberry Banke. This is a subdivision creating two structures on their own lots. He requested this matter be tabled to allow them to appear before the BOA and that would allow them to work with staff on sidewalk and parking issues. Everything would be in order at that time.

The Chair asked if anyone else was present from the public, wishing to speak to, for, or against the petition.

Maria Danahoe, of Gates Street. Her lot abuts the two lots in question. She won't be here in June so she asked for a short explanation of their plans. Attorney Loughlin offered to speak with her after the meeting.

The Chair kept the public hearing open.

DISCUSSION AND DECISION

Deputy City Manager Hayden made a motion to table to the June 15th Planning Board Meeting to allow staff to assist the applicant in going to the Board of Adjustment. Mr. Hopley seconded the motion.

The motion passed unanimously.

.....
E. The application of **Kearsarge Mill Condominium Association, Owner**, for property located at **361 Hanover Street** wherein Amended Site Review approval is requested 1) to amend easements regarding access between the this lot and abutting lot owned by Hill Hanover Group shown on Assessor Plan 138 as Lot 64; 2) to allow a parking easement from the City of Portsmouth for abutting property shown on Assessor Plan 138 as Lot 60; and 3) to grant an access easement to the City of Portsmouth to allow them to maintain and repair a building located on abutting property shown on Assessor Plan 138 as Lot 60, with related paving, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 138 as Lot 63 and lies within a Central Business B District.

Coviello stepped down.

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Attorney Sharon Cuddy Somers appeared on behalf of the applicant. Also present was Jim Warner, President of the Condominium Association to answer questions of historic nature. Also present was Dirk Grotenhuis of HTA Kimball Chase. Attorney Somers indicated this was an unusual plan as there are no site changes and no changes in the operation because this plan was originally approved in 1986 and only two areas are of concern tonight. They are present because an abutter recently developed their property, Hill Hanover Group, LLC, and questions came to light regarding the right of way. The approved 1986 plan has an oddly shaped right of way which is a connector from Hill Street to Hanover Street. There are also a series of parking spaces in the rear and located on City property. The approved plan shows six front parking spaces in the right of way which was approved in 1986 despite a deeded right of way. They are proposing a new blanket easement and they in turn will release all rights in the previous easement. The parking configuration that was approved in 1986 will remain in

place. TAC felt that was an issue between two abutters. They have been before the BOA to assist with abutter plans. The Fire Department has no concerns about the easement changes.

The other area of interest is in the back. In 1986, there was a discussion between City officials regarding the need to have Kearsarge Mill park in the rear but on City property. In return, the property needed to be maintained. They have expended over \$100,000 to pave, plow, landscape and police the area. There was no discussion at that point about the need for a formal agreement. They would now like to formalize this arrangement. She has sent a request to the City Manager to park on this area. Attorney Sullivan has requested a document which they are agreeable with. She explained that they will accept liability for the property and they will grant an easement to the City for access to their building in exchange for the parking. JSA has spoken to Steve Parkinson who has expressed an interest in this proposal.

Attorney Somers stated there was no change in compliance with City Ordinance, no change in utilities or stormwater management as there is no development. They are seeking to have the Planning Board grant a conditional approval for the amended Site Plan, conditioned on the City Council granting an irrevocable license. When they first started out, the notes originally mentioned easements but they will now update to an easement with what has been mutually agreed on.

Deputy City Manager Hayden asked if any easements or licenses had been executed yet? Attorney Somers confirmed that they have not yet been executed.

The Chair asked if anyone else was present from the public, wishing to speak to, for, or against the petition. Seeing no one rise, the public hearing was closed.

DISCUSSION AND DECISION

Mr. Holden indicated that the Department recommends granting approval. He confirmed it is a license and concur that the three stipulations should be incorporated in with the other five. The intent is that there will not be a referral back and they are completing that tonight. This is a good way to correct the situation.

Deputy City Manager Hayden made a motion to grant with the stipulation that the notes are corrected to change license to easement. Mr. Coker would be comfortable with a stipulation that the City Attorney will sign off on this. Deputy City Manager suggested adding that to the first stipulation.

The motion passed unanimously with the following stipulations:

Stipulations from the May 18, 2006 Planning Board Meeting:

- 1) That this Board recommends that the disposition of this encroachment should be by license and the Board recommends to the City Council that an agreement favorable to the City should be approved, reviewed and approved by the City Attorney, and should include the following:
 - That the City can revoke permission at its will;
 - That the use of City property by others should be properly compensated; and
 - That the City incurs no liability from this private use.

Stipulations from the May 2, 2006 Technical Advisory Committee Meeting:

- 2) That the Planning Board is put on notice that this Committee is concerned about the use of the City property and that the Planning Board may wish to have this issue clarified further before acting on the application;
- 3) That the paragraph labeled "References for Easements" shall be changed to "Easement Notes" so that it matches what is on the plan;

- 4) That the Site Plan Notes reference Map 138, Lot 64 but no where on the plan does it identify that lot so that note should be clarified; and
- 5) That Plan Note #1 appears to be missing some words and should be corrected.

II. CITY COUNCIL REFERRALS/REQUESTS

A. Request from The Housing Partnership for an Amendment to Section 10-1503 of the City’s Zoning Ordinance Relating to Residential Planned Unit Developments (PUD); (Referred from the March 20, 2006 City Council Meeting);

B. Request from The Housing Partnership for an access easement for property located on Bedford Way; (Referred from the March 3, 2006 City Council Meeting and combined with the above request for a Zoning Amendment by The Housing Authority);

Mr. Holden indicated that the Planning Board received with this packet the Applicants informational report and the Department’s draft Rezoning Report based on that info. This request has all available information before the Board. A decision should be made on how best to proceed.

Attorney Sharon Somers, representing The Housing Partnership, was present along with Diane Hartley, Bryan Wyatt and John Chagon. They appreciate the time and effort that the Planning staff has put into the report. There is a need for additional information and then the staff will provide supplemental information to the Board.

There was a suggestion of having the Board meet with TAC for an informal review. The next TAC meeting is May 30th and she would encourage a joint review to move forward on this matter. They are looking to work cooperatively with staff to move this along.

Deputy City Manager Hayden suggested having a work session on June 15th for the Board and invite TAC to join them. Attorney Somers felt tha it would be better to flip the order as they thought it might be easier for TAC to review this at their regular meeting and TAC input will be critical.

Vice Chairman Hejtmanek indicated that Planning Board members are not available for the TAC meeting.

Deputy City Manager Hayden asked how would they move forward at that point? Attorney Somers indicated that TAC would be the first of several meetings to flush out the issues.

Chairman Ricci suggested a work session on June 5th with TAC, at 6:00 pm.

Deputy City Manager Hayden made a motion to invite TAC to a June 15th work session. Mr. Coker seconded the motion.

The motion passed unanimously.

III. OLD BUSINESS

A. Planning Board appointment to the Historic District Commission;

Mr. Holden recommended tabling this to the June meeting.

Deputy City Manager Hayden made a motion to table. Mr. Coviello seconded the motion. The motion passed unanimously.

.....
IV. AMENDED SITE PLAN REVIEW

A. Property Located at 6-16 Congress Street – addition of grease trap;

Mr. Holden stated that the applicant has indicated that a restaurant type use will be going in at this location. The City has required that a grease trap go in and that no waivers be granted. The plan has been amended to show a grease trap that conforms to all city regulations. The City views this very positively. No action was required.

.....
B. Property Located at 3002 Lafayette Road;

Mr. Holden indicated this was a minor amendment. Ms. Tillman indicated that this was a dry cleaning laundry establishment and they are having a small portion of the basement area for mechanicals. The building code requires two means of egress. They are proposing an external stairway with double doors to allow equipment to be moved in via a crane.

Mr. Holden added that this project has a condition outstanding by the original approval so it is not moving forward yet.

Mr. Coviello questioned the out swing doors. Ms. Tillman confirmed they would only be used for installing equipment

No action was required.

.....
Deputy City Manager Hayden confirmed a 7:00 pm Work Session on the Zoning Ordinance with Rick Taintor on June 22nd.

.....
V. ADJOURNMENT

A motion to adjourn at 8:05pm was made and seconded and passed unanimously.

.....
Respectfully submitted,

Jane M. Shouse
Acting Secretary for the Planning Board

These minutes were approved at the August 17, 2006 Planning Board Meeting.