

MINUTES

**PLANNING BOARD
PORTSMOUTH, NEW HAMPSHIRE**

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

7:00 P.M.

APRIL 29, 2010

MEMBERS PRESENT: John Ricci, Chairman; Paige Roberts, Vice Chairman; Eric Spears, City Council Representative; John Rice; Anthony Blenkinsop; Cindy Hayden, Deputy City Manager; Richard Hopley, Building Inspector

MEMBERS EXCUSED: Donald Coker; MaryLiz Geffert; Norman Patenaude, Alternate, and William Gladhill, Alternate

ALSO PRESENT: Rick Taintor, Planning Director

.....
WORK SESSION

A work session was held from 6:30 – 7:00 pm to discuss changes to the Zoning Ordinance and to schedule a work session with the Board of Adjustment to discuss the intent of the Zoning Ordinance.

Mr. Taintor felt there had been significant changes in:

- Sign regulations
- Parking regulations (no parking between a building and the street)
- Downtown parking
- Gateway District

Charles Leblanc, Chairman of the Board of Adjustment, felt that the downtown restaurant parking issue and signs were both issues with the Board of Adjustment.

Mr. Taintor indicated that a report from the Downtown Parking Focus Group would be completed within the next couple of weeks and it would be good to schedule the BOA work session after that report is available.

BOA Chairman Leblanc stated that the BOA did not receive the background on the new Zoning Ordinance.

Mr. Rice felt it would be a good idea to get a list from the BOA of issues they want to discuss at the work session. It was felt that it would be worthwhile for Mr. Taintor to present his powerpoint report as well.

Deputy City Manager Hayden indicated that they may want to bring the Conservation Commission back for their feedback as well sometime.

Mr. Taintor indicated that some of the most controversial items are the prohibition on parking in front of a building and signs. The new drive-thru standards have also come up on several occasions recently.

It was agreed to schedule a joint work session with the BOA, probably sometime in June, from 7:00 pm – 9:00 pm. There would be an Agenda to follow that night and material would be distributed ahead of time.

.....

I. PUBLIC HEARINGS

A. Public hearing on a request to place the relocated Seabrook Station siren pole at 125 Brewery Lane (former DPW facility) within the Conservation Easement adjacent to Chevrolet Avenue.

The Chair read the notice into the record.

SPEAKING TO THE REQUEST:

John Chagnon, of Ambit Engineering, appeared on behalf of 125 Brewery Lane, Saco Avenue Professional Building, Inc., on this request. He explained that the existing Seabrook siren pole interferes with the re-development of this site, from both the standpoint of the proposed building location and from the City working on some sewer improvements. They received Site Plan approval as part of that approval they relocated this pole. Subsequent to that the City has extended the water line through the site connected to Chevrolet Avenue which interferes with the location they had previously slated for the pole. They are now looking to relocate the pole on Chevrolet Avenue, almost on the westerly property line next to Plaza 800. It would essentially be underneath the overhead wire that serves the pole in its current location. They would be removing 220’ of overhead wire so it will look a lot better. PSNH would have access to this new pole.

Mr. Chagnon displayed the Conservation easement and explained that the easement was part of the sale and is south of the Chevrolet pavement line at the southerly property line of the 125 Brewery Lane site. The proposed area for the pole has previously been disturbed and is not vegetated.

Mr. Chagnon concluded by asking for the Board’s favorable recommendation back to the City Council.

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

Patricia Martine, 139 Aldrich Road, which is directly behind the proposed pole location. The pole is between her property and that of Mr. and Mrs. William Fales. She does not have an issue with the development and was very pleased when the Conservation easement was created. However, they had an expectation that they would not be subjected to tons of garbage after the snow removal process. Also, knowing that the drainage repair is part of the development plan, she hopes that will help alleviate the water that she gets in her back yard. She gets up to 1’ of water and it does not drain as the storm drain doesn’t function properly. Her only other request is that they consider the two properties

most affected by this development and ask the developer and the City to consider some sort of additional visual barrier for those two lots. Some sort of fencing would correct the whole problem. The snow removal then could not be forced onto the easement and the garbage would go away. If the drainage was repaired, they would be very happy campers. They understand that they live next to a commercial area but she felt it was time that people take note that they are over there. They are good neighbors and like where they live.

Mr. Taintor stated that the project has changed because of the City’s on-going drainage improvement project so that should improve the drainage problem on their property. He also indicated that they would be open to looking at the fence issue. He acknowledged that the City has the responsibility to keep the easement area free of debris. Ms. Martine responded that they have written the City each spring and Code Enforcement has come down to look at it but they have never seen any results at all. Mr. Taintor stated they will try to do better on that. He also pointed out that where the pole is being relocated to will restrict truck movement in that area and it will probably keep some trucks 10’ – 15’ further away from the neighborhood. Ms. Martine confirmed they are seeing a lot more traffic now and a fence would make everyone happy and divide the commercial area from the residential area.

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 Chair closed the public hearing.

DISCUSSION AND DECISION OF THE BOARD

Deputy City Manager Hayden asked what the status of the Site Plan approval was. Mr. Taintor confirmed that it has been extended several times and is valid until September of this year. The last extension was at the request of the City. Deputy City Manager Hayden asked if it seemed likely that they will need another Site Plan approval before they start construction. If so, that would be the time to bring up the fence issue.

Mr. Rice made a motion to recommend approval to City Council. Deputy City Manager Hayden seconded the motion and reiterated that the Board heard the concerns of the abutters and if they have the opportunity to have the Site Plan in front of them again, which she believes is likely, they can look into making some of those changes that were discussed.

The motion to recommend approval to place the relocated Seabrook Station siren pole at 125 Brewery Lane (former DPW facility) within the Conservation Easement adjacent to Chevrolet Avenue passed unanimously.

.....

B. Public hearing on a request to rezone lots on Sagamore Grove from Waterfront Business (WB) to Mixed Residential Business (MRB) or Single Residence B (SRB).

The Chair read the notice into the record.

SPEAKING TO THE REQUEST:

Peter Weeks presented on behalf of three lot owners on Sagamore Grove that abut the water. He provided the Board with materials giving a history of Sagamore Grove. This land goes back to the 1940's – 1950's as residential lots. In 1965 the City rezoned it to Waterfront Business. Since that time, to his knowledge, there has only been one waterfront business use on any of those six lots. Looking at the Zoning Ordinance requirements for what you can do in that district, you must have a business that can get access to the Piscataqua River. The bridge by the Wentworth Hotel is a draw bridge and any large vessel would have to have that bridge raised. Any use as a waterfront business in that area has not been successful. The six lots all have residential structures on them. The Department's analysis stated that over 50% of the lots do not meet the dimension requirements for waterfront businesses. If any changes need to be made to the structure, because the district does not allow any residential use, a variance is required and the BOA has decided that residential uses are not allowed in Waterfront Business.

Going back to the history which he had provided to the Board, back to the first zoning map he could find from the 1920's, up until 1965, this area was always zoned residential. In trying to create more business for the community, David Holden established more Waterfront Business districts but this particular district did not generate any waterfront activities.

Mr. Weeks stated that the people living on these lots find it difficult to be able to use the properties the way it is currently zoned. They are requesting to change to either a SRB or MRB district. Currently there is MRB zoning on the other corner of Sagamore Avenue. The land across the creek is zoned SRB. It makes sense in their request to make it consistent with other properties to allow for uses which are the same as adjoining properties. Mr. Weeks stated that Mr. Taintor has indicated that a MRB zone would create too much of an extensive use because it is less constrictive in the size of the lot, frontage, lot coverage, etc. Mr. Weeks noted that his request is for the 6 lots on Sagamore Grove. There is another option in the Board's packet to include two other lots on Wentworth Road to be included in that but he was not sure those two property owners would want their property rezoned. They are in a different situation. Mr. Weeks advised the Board that Walter Allen created, through the City Council in the 1980's, the substandard road known as Sagamore Grove. Mr. Weeks felt it would make more sense to zone the six residential lots MRB rather than Waterfront Business as they have not been used for what they have been zoned for since 1965.

Mr. Weeks stated that he would concur with Mr. Taintor's recommendation on Page 4 of the Department Memorandum which read: "Based on the character of the existing neighborhood and the alternatives requested for consideration by the petitioners (i.e., MRB or SRB), a rezoning to Single Residence B appears to be the more appropriate option. Such a rezoning would recognize the existing uses and would reduce some existing nonconformities, without allowing an increase in the intensity of use."

Mr. Weeks concluded by stating that the Petitioners would accept rezoning the property to either MRB or SRB, or to allow residential use within Waterfront Business.

Councilor Spear asked when the land was subdivided. Mr. Weeks responded it was in the 1940's – 1950's. Originally there was a private driveway until the road was accepted by the City Council in 1980.

Mr. Rice asked if anyone in that area is practicing any type of waterfront business now? Mr. Weeks confirmed that there is no waterfront business activity on any of those six lots.

Mr. Blenkinsop wanted to confirm how many owners he represents. Mr. Weeks stated that they had a meeting and invited all six of the owners, three of which came and signed the Petition. One of the other owners is present tonight. The other two were invited to the meeting and he has not heard from them.

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

Walter Kuchtey, 80 T. J. Gamester Avenue, was representing his parents, Michael and Barbara Kuchtey, who own two lots on Wentworth Road. They are against the rezoning of the area. They feel they bought their two lots as Marine Business Waterfront and they would like it to remain the same. Changing the zoning would create an undue hardship for them. Regarding the bridge by the Wentworth which Mr. Weeks said was too short for small boats, Mr. Kuchtey indicated that the bridge prevents high boats from going in. Large boats go through the bridge, especially during low tide. The 40' Coast Guard cutter goes through the bridge. It is just tall sail boats that can't go through. Mr. Kuchtey also indicated that there was a large lobster business in the area and there is the marina now so there are waterfront businesses in the area. His parent's property is vacant and nothing is on it.

Justin Nadeau, representing Witchcove Marina Development. He advised the Board that he also spoke with Barbara Kuchtey today and she also asked him to speak on their behalf. Mr. Nadeau echoes Mr. Kuchtey's remarks. They are opposed to rezoning this area to SRB and it would cause undue hardship and potentially would devalue their property. He wanted to state his objection and concern for the record.

Walter Allen, 1 Sagamore Grove Road. Mr. Allen stated that he was between a rock and a hard place with these options. Mr. Allen and two other properties in that area never should never been zoned waterfront business as they don't have access to the water. One neighbor, Larry Hayes, has access to the water at high tide. Mr. Allen doesn't see where this benefits them one way or the other. He would probably rather see the three houses as MRB although it would be a choice of the lesser of two evils. He can see why the lots on the water would want to be changed to what is on the other side of the creek and he agrees with them. However, if they do this he would ask that they put a restriction on it. Because Sagamore Grove is a substandard street if any new use or change goes in they should be required to have off street parking. He would rather see it go the way Mr. Weeks wants it to go.

William Pingree, 6 Sagamore Grove. He feels strongly that this should be rezoned to what was there and in all practicality is there now, being a mixed business residential area. The businesses you could put in there are very limited. He does not feel it should be Waterfront Business as it is all residential. As far as the Kuchtey land, that could remain Waterfront Business and they could just change the lots off Sagamore Grove. Mr. Pingree advised the Board that trying to do anything in that area to a residence is very difficult. He felt the zoning should be changed.

Mr. Weeks confirmed that the original request was for the 6 lots on Sagamore Grove and did not include the Kuchtey property on Wentworth Road. He did not believe that Mr. & Mrs. Kuchtey were opposition to the rezoning of the six lots on Sagamore Grove because those are all residential use. The Department Memorandum included an option to include those lots and he doesn't think that should negate rezoning the other 6 lots. They have heard from 2 owners (Mr. Allen and Mr. Pingree) that they are in favor and the three owners signed the petition.

Bruce Kuchtey spoke as a resident of Portsmouth, on his own behalf. He likes to keep the status quo. He doesn't see how rezoning a property so that people can put up two story houses, block views for people on the other side of the road, or making big houses with big decks is an improvement in his opinion. He feels the nice cottages that are on that road now look nice and it should stay the same. He does not believe they should rezone it because someone got turned down to build an addition and now wants to change the zoning so he can get his house built.

Mr. Allen asked if SRB allows for a home business. Mr. Taintor confirmed that it does. Mr. Allen ran an appliance repair business for 12 years and he wanted to make sure that was allowed.

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 Chair closed the public hearing.

DISCUSSION AND DECISION OF THE BOARD

Mr. Taintor advised the Board that there are three options. The six lots that they are talking about is a total of three and one half acres and if you just rezone them there would be a Single Residence B District that would sit all by itself and he was trying to avoid that. In Option One he was showing an expansion of the MRB district to include the two adjacent lots (the Kuchtey lots). The western most part of the Nadeau property has received variances to place two residences there so he was thinking of that as a single residence area and trying not to isolate the Kuchteys' two waterfront business lots. The second option was to extend the new Single Residence B District to include the residential section of the Witch Cove lot and the Kuchtey's two lots. The third option is to rezone the 6 Sagamore Grove lots from Waterfront Business to Single Residence B and letting the Wentworth House Road lots and the Kuchtey properties remain Waterfront Business.

Mr. Blenkinsop asked if there was any drawback to recommending the rezoning of just the six Sagamore Grove lots. Mr. Taintor felt, just as a matter of policy, they try to avoid those tiny zoning districts but this is a unique area where summer cottages have become permanent residences. He did not see a major issue.

Deputy City Manager Hayden made a motion to recommend that Map 201, Lots 3-8 be re-zoned from Waterfront Business to Single Residence B. Mr. Rice seconded the motion.

Chairman Ricci was in agreement with this. He felt that Sagamore Grove is one of his favorite streets in the City and has a lot of character. He would completely support those six lots being rezoned to Single Residence B.

Ms. Roberts originally agreed with Mr. Taintor’s concern about spot zoning but she felt the history forces them into this situation. It is an unusual situation and this is the logical thing to do.

Deputy City Manager Hayden stated that this recommendation tonight is a recommendation to the City Council and it will probably be on their Agenda for Monday night. There is a process at the City Council level where they will have three readings and the second and third readings would be public hearings where people could come out and speak also.

Mr. Rice will be voting in favor of the motion but wanted to say the original intent of the zoning was to preserve the waterfront business. They need to keep that in mind but he is not envisioning that in this particular area so he will support the motion.

The motion to recommend to the City Council that Map 201, Lots 3-8 be rezoned from Waterfront Business to Single Residence B passed unanimously.

Mike Goodrich, 955 Sagamore Avenue, Freedom Boat Club, asked if this would affect his property. Chairman Ricci stated that they are only rezoning the 6 lots on Sagamore Grove Road. Mr. Taintor added that it may affect his property with business use setbacks from residential properties but he was encouraged to contact the Planning Department for more information. Mr. Goodrich stated that he supports it and doesn’t see anyone being able to make those lots work as waterfront businesses.

.....

Chairman Ricci pointed out to the Board that copies of the UNH Stormwater Center Bi-Annual Report had been provided to them and he encouraged them to sit down and read it as it was a great document.

.....

Deputy City Manager Hayden indicated that John Bohenko has many meeting conflicts with the Joint Building Committee meetings for the Middle School and has requested that the Board appoint the Assistant Community Development Director, David Moore, to fill that Commissioner’s seat instead.

Councilor Spear made a motion to substitute David Moore for John Bohenko as a Commissioner on the Rockingham Planning Commission. Mr. Blenkinsop seconded the motion.

The motion to substitute David Moore, Assistant Community Development Director, for John Bohenko, as a Commissioner to the Rockingham Planning Commission, passed unanimously.

.....

As a result of their earlier Work Session where they agreed to schedule a joint Work Session with the BOA, Mr. Taintor asked for a vote to set that up sometime in June.

Deputy City Manager Hayden made a motion to schedule a Joint Work Session with the BOA in June. Mr. Blenkinsop seconded the motion.

The motion to schedule a Joint Work Session with the BOA in June passed unanimously.

II. ADJOURNMENT

A motion to adjourn at 8:40 pm was made and seconded and passed unanimously.

.....

Respectfully submitted,

Jane M. Shouse
Acting Secretary for the Planning Board

These minutes were approved by the Planning Board on May 20, 2010.