

MINUTES

**PLANNING BOARD
PORTSMOUTH, NEW HAMPSHIRE**

CITY HALL, MUNICIPAL COMPLEX, 1 JUNKINS AVENUE

7:00 P.M.

AUGUST 18, 2011

MEMBERS PRESENT: John Ricci, Chairman; Paige Roberts, Vice Chairman; Richard Hopley, Building Inspector; John Rice; Anthony Blenkinsop; Norman Patenaude, Alternate; and William Gladhill, Alternate

MEMBERS EXCUSED: Eric Spear, City Council Representative, Cindy Hayden, Deputy City Manager and MaryLiz Geffert;

ALSO PRESENT: Rick Taintor, Planning Director

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I. APPROVAL OF MINUTES

- 1. Approval of Minutes from the May 19, 2011 Planning Board Meeting – Unanimously approved.
 - 2. Approval of Minutes from the June 16, 2011 Planning Board Meeting – Unanimously approved.
 - 3. Approval of Minutes from the July 21, 2011 Planning Board Meeting – Minutes were not available for approval.
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II. PUBLIC HEARINGS – OLD BUSINESS

The Board’s action in this matter has been deemed to be quasi-judicial in nature. If any person believes any member of the Board has a conflict of interest, that issue should be raised at this point or it will be deemed waived.

A. The application of **Henry and Jaqueline Brandt, Owners**, for property located at **37 Wholey Way** and **Salmon Falls Holding, LLC, Owners**, for property located **off Echo Avenue**, wherein Preliminary and Final Subdivision Approval (Lot Line Revisions) are requested between two lots as follows: Lot 64 as shown on Assessor Map 237 increasing in area from 2,728 ±s.f. to 15,056 ± s.f. with 241.28’ ± of continuous street frontage on Echo Avenue and Wholey Way and Lot 76 as shown on Assessor Map 237 decreasing in area from 43,703 ± s.f. to 31,375 ± s.f. with 200.89’ ± of continuous street frontage on Wholey Way. Said properties are located in a Single Residence B district and are shown on Assessor Map 237 as Lots 64 and 76. This application was previously denied by the Planning Board; however, the Rockingham County Superior Court subsequently reversed the Board’s decision and remanded the matter “for consideration of the wetlands issue and any other concerns not addressed” in the Board’s decision. (This application was postponed at the July 21, 2011 Planning Board Meeting)

City Attorney Robert Sullivan was present for any questions from the Board.

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Attorney Bernard Pelech was present on behalf of Mr. & Mrs. Brandt. Attorney Pelech stated that this matter was tabled last month to obtain an opinion from the City Attorney regarding which ordinance applies to the subdivision application. Attorney Pelech stated that Attorney Sullivan had provided a report stating that the previous Zoning Ordinance applies to the subdivision. (Note: The City Attorney's report further stated that a subsequent application for a building permit would be subject to the current ordinance, under which the threshold for a jurisdictional wetlands is 10,000 sq. ft.) They meet all requirements and the wetland ordinance of 2008 had a jurisdictional minimum area of ½ acre. They have submitted evidence that the jurisdictional wetlands are less than ½ acre. Therefore, no Conditional Use Permit is required.

The Chair asked if anyone 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. Hopley moved for Preliminary and Final Subdivision approval with the four conditions in the Staff Memorandum. Mr. Taintor stated they have not received a new plan since July.

Ms. Roberts seconded the motion.

The motion to grant Preliminary and Final Subdivision approval passed unanimously with the following stipulations:

Conditions Precedent (to be completed prior to signing and recording of the plat):

1. The following changes shall be made to the subdivision plat:
 - (a) Show the existing dwelling on Lot #65 (41 Echo Avenue).
 - (b) Show the existing driveways on Wholey Way, and the location of the proposed driveway to Lot #64.
 - (c) Include the stamp of a New Hampshire certified wetlands scientist for the wetlands delineation.
 - (d) Delete the shaded area on proposed Lot #64, the words "Buildable Envelope," and the arrow pointing from those words to the shaded area.
 - (e) Add the following notes to the plan:
 - "A building permit on Lot #64 shall be governed by the Zoning Ordinance, Building Code and Planning Board Regulations in effect on the date of issuance."
 - "Approval of this plan by the Planning Board does not guarantee that Lot #64 is buildable under State and City laws, ordinances and regulations."
2. The applicant shall obtain a driveway permit from the Department of Public Works.

- 3. All property monuments shall be set as required by the Department of Public Works.
- 4. GIS data shall be provided to the Department of Public Works in the form required by the City.

III. PUBLIC HEARINGS – NEW BUSINESS

*The Board’s action in these matters has been deemed to be quasi-judicial in nature.
 If any person believes any member of the Board has a conflict of interest,
 that issue should be raised at this point or it will be deemed waived.*

A. The application of **Stephen and Karin Barndollar, Owners**, for property located at **120 Ridges Court**, for Conditional Use Permit Approval under Section 10.1017 of the Zoning Ordinance for work within a tidal wetland buffer, to install a 16’ x 11’ solar panel array to the south side of the existing garage. Said property is shown on Assessor Map 207 as Lot 61 and lies within the Single Residence B (SRB) District.

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

John Chagnon, of Ambit Engineering, was present on behalf of Mr. & Mrs. Barndollar. Mr. Chagnon stated that this was a Conditional Use Permit application for an 11’ x 16’ solar array on the south side of the existing residence. They were present in June for landscaping improvements and the removal of rip rap and approval was granted. They would now like to install the solar panels. The BOA granted relief from the front setback requirement. In August the Conservation Commission reviewed this application and recommended approval. The Planning Staff also recommends approval.

The Chair asked if anyone 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. Rice made a motion to grant Conditional Use Permit approval. Ms. Roberts seconded the motion.

The motion to grant Conditional Use Permit approval passed unanimously.

B. The application of **Sharon R. Gross Revocable Trust, Owner**, for property located at **201 and 235 Cate Street**, wherein Preliminary and Final Subdivision Approval (Lot Line Revision) is requested between two lots as follows: Lot 31 as shown on Assessor Map 163 decreasing in area from 15,252 ±s.f. to 12,450 ± s.f. with 158’ ± of continuous street frontage on Cate Street and Lot 32 as shown on Assessor Map 163 increasing in area from 15,330 ± s.f. to 18,132 ± s.f. with 138’ ± of continuous street frontage on Cate Street. Said properties are located in a General Residence A District where the minimum lot size requirement is 7,500 s.f. and minimum street frontage requirement is 100’.

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

David Gross, husband of Sharon Gross, presented to the Board. Mr. Gross explained that this came about when they started their estate planning. The property will be split up and their attorney advised them that there would have to be an easement between the two properties for access and snow storage. The easement idea was one option but easements and private driveways have been a problem in the past for them so they felt they would be better served with a formal lot line revision. Dave Hislop, of Knights Hill Land Surveying, was present for any questions.

The Chair asked if anyone 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. Blenkinsop asked if there was a curve in the lot line as he thought the City preferred lot lines that were not angled. Mr. Taintor did not believe that would be a problem.

Mr. Rice made a motion to waive compliance with Section VI.2.B of the Subdivision Rules and Regulations to allow the lot dimensions as shown on the subdivision plan. Mr. Hopley seconded the motion.

The motion to waive compliance with Section VI.2.B passed unanimously.

Mr. Rice made a motion to grant Preliminary and Final Subdivision approval with the three recommended stipulations.

Mr. Blenkinsop seconded the motion.

The motion to grant Preliminary and Final Subdivision approval passed unanimously with the following stipulations:

1. The final plat and all resulting deeds shall be filed concurrently at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.
2. Property monuments shall be set as required by DPW prior to the filing of the plat; and
3. GIS data shall be provided to DPW in the form as required by the City.

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C. The application of **30 Maplewood Avenue, LLC, Owner**, for property located at **30 Maplewood Avenue**, requesting Site Plan Approval to construct a 1-story 1,700 ± s.f. addition to an existing building, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 125 as Lot 2 and lies within the Central Business B (CBB) District, Downtown Overlay District (DOD) and the Historic District.

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

John Chagnon, of Ambit Engineering, addressed the Board. He stated that on February 17, 2011 they received approval for remodeling on the site. The applicant was asked to upgrade the sidewalks to brick so the new plan shows the brick sidewalk that was included in the final approval going from Maplewood Avenue at the northerly end of the redevelopment area, all the way around to Bridge Street. Tonight's proposal is to add a 1700 s.f. one story addition on the west side of the building. In the process of getting tenants to fill the space and remodeling, the developer became aware that some of the tenants would require additional space to make their units work. Originally they had the access door in the same place it is now and they had proposed a sidewalk internal to the site that would bring people entering and exiting out to the parking lot on the north side of the structure. As they are now so close to the City sidewalk, they are showing one additional sidewalk connection and an egress door.

They went to TAC and received a favorable recommendation with stipulations. They have no problem with any of the stipulations except the requirement that they install the brick sidewalk along Bridge Street. There are future plans for additional buildings on the site and they always understood that the City would like them to rebrick the entire lot as part of the redevelopment. They do not have a problem with upgrading all of the remaining sidewalk but this is not the right time. If they are inclined to include this stipulation, they would request an amendment to the plan, on the Utility Plan C-3, the applicant is providing an area on the lot for a switching enclosure to service the neighborhood which PSNH requested. The switching enclosure has been put in the northwest corner. There was discussion with the City on how to feed it and the City indicated that they would like to service it using the manhole on the north side of Hanover Street, in front of the property. They advised the City they would like to service it by going down the sidewalk on Bridge Street, over to the enclosure facility. The other way is a much longer path and will cost a lot more money. They were told by the City that they couldn't go down Bridge Street because they didn't know what their plans were. Therefore, they would ask that they have the utility conduit run on the Bridge Street side.

Mr. Hopley asked about two fire department connections on Sheet C-3. Mr. Chagnon confirmed that in the next phase there will be less space between the building so the Fire Department asked them to put a new sprinkler connection on the Bridge Street side. The intent is not to abandon it.

Mr. Rice asked if the new addition has been approved yet. Mr. Taintor explained it went to the HDC first and now is before the board. Mr. Gladhill confirmed that the addition was before the HDC but the switching enclosure was not. Mr. Taintor indicated it has not been discussed whether that will require formal approvals.

The Chair asked if anyone 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

Ms. Roberts made a motion to approve amended Site Plan approval with the recommended stipulations except #1, which is to reconstruct the sidewalk along Bridge Street, because the applicant is talking about doing that in Phase II of the project. That would leave four stipulations.

Chairman Ricci indicated he would like to see the sidewalks go in now. He doesn't have an issue with the conduit. Mr. Hopley asked if the routing underground was brought up at TAC. Mr. Taintor stated it was not but it seems reasonable. This is not really a DPW issue as PSNH is asking for the switching enclosure. Mr. Chagnon explained that one TAC member asked if there would be more traffic on the Bridge Street sidewalk and the answer was yes so as part of the motion stipulation #1 was proposed. There was no opportunity for a discussion on the matter. He wasn't sure DPW would have an issue putting the conduit under the Bridge Street sidewalk. They originally talked about redoing Bridge Street at some point but at the meeting they said that would be way in the future.

Mr. Hopley felt it was reasonable to go the shortest distance but they would want to make sure that DPW didn't have an issue with going under the sidewalk on that side, versus Maplewood.

Mr. Hopley seconded the motion with an amendment to coordinate with DPW on the re-routing of the electrical conduit to the new PSNH switching vault and coordinate with the construction of the new brick sidewalk down to that point.

Ms. Roberts was agreeable to the amendment.

The motion to grant Amended Site Plan Approval passed unanimously with the following stipulations:

1. The applicant shall reconstruct the sidewalk in brick to the City standard along Maplewood, Hanover and Bridge Streets from the Maplewood Avenue driveway to the Bridge Street driveway. The Site Plans shall be revised to include reconstruction of the sidewalk along Bridge Street between Hanover Street and the site driveway.
2. The applicant shall coordinate with DPW on the routing of the electrical conduit to the new PSNH switching vault. If approved by DPW, the Site Plans shall be revised to show the conduit under the Bridge Street sidewalk rather than the Maplewood Avenue sidewalk.
3. The applicant shall determine whether the existing water service from Deer Street is adequate for the proposed uses, and shall replace it with a larger line from Maplewood Avenue if necessary.
4. The applicant shall pay the capacity use surcharge for water and sewer applicable to the proposed uses.
5. The applicant shall confirm with the Planning Department whether approval of the proposed switching enclosure by the Historic District Commission is required, and shall obtain such approval if required.
6. The applicant shall prepare a Construction Management and Mitigation Plan (CMMP) for review and approval by the City.

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D. The application of **233 Vaughan Street, LLC, Owner**, for property located at **233 Vaughan Street**, requesting Amended Site Plan Approval to eliminate the first floor parking spaces and replace them with additional commercial space, to change the second and third floor use from office to 6 residential units, and to eliminate the driveway on Vaughan Street, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 124 as Lot 14 and lies within the Central Business A (CBA) District, the Downtown Overlay District (DOD) and the Historic District.

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

John Chagnon, of Ambit Engineering, appeared on behalf of the applicant. Mr. Chagnon explained that this is a request for an amendment to their previously approved site plan. They would like to eliminate the first floor parking area off of Vaughan Street. There was also a garage level parking area that was accessed via Green Street. Their proposal is to eliminate the parking and turn the space over to more commercial space. They would still have parking on the lower level at Green Street. They would also change the use on the 2nd and 3rd floors from office to 6 residential units. They received a favorable recommendation from TAC on August 2nd and they went to the Parking Committee on August 11th. Suggestions were made by TAC regarding parking. They are constructing the sidewalk from the site out to Maplewood Avenue and TAC wondered if the road was wide enough to allow for some more parking and maybe the City could install some meters for their retail use. The Parking Committee reviewed their plan and recommended that the plan go before the City Council for approval of 10 parking spaces and one handicapped space to be metered by the City. The only other stipulation is regarding the underground electric where their prior approval had the electric running in Green Street to the transformer. Currently there is a pole that will be removed and an underground line that feeds to that pole. That underground line still shows up on the utility plan as an existing line and that will be abandoned with the new routing of the services to the Green Street properties. They can add a note to the plan "To be abandoned" to address that.

Mr. Gladhill asked about the landscape wall which has been extended. Mr. Chagnon confirmed they have extended it to provide some plantings to soften the height. Mr. Gladhill asked if that would need HDC approval. Mr. Taintor felt it would have to go back to the HDC for approval. Mr. Chagnon confirmed that the architect is scheduled for the next HDC meeting.

Mr. Taintor asked if the underground utility line is the only thing on the plan to be abandoned. He asked about the overhead wire. Mr. Chagnon confirmed that will be abandoned also. Mr. Taintor suggested they indicate on the plan all utilities that will be abandoned. Mr. Chagnon responded that he will put them on a layer so that when it plots the proposed utility plan those will not be shown.

Mr. Hopley asked which line was being abandoned. Mr. Chagnon indicated there is a line that comes out of the PSNH switching vault and goes underground, up the pole, overhead to another pole and then underground. They will run a new line to a transformer, eliminate the pole and the pole mounted transformer, so that everything will be underground.

The Chair asked if anyone 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. Rice made a motion to grant amended Site Plan approval as presented.

Mr. Blenkinsop seconded the motion.

The motion to grant amended Site Plan approval passed unanimously.

IV. CITY COUNCIL REFERRALS/REQUESTS

*The Board's action in these matters has been deemed to be legislative in nature.
If any person believes any member of the Board has a conflict of interest,
that issue should be raised at this point or it will be deemed waived.*

A. Request for Rezoning of Land on Bartlett Street/Cate Street.

Mr. Taintor stated that this request is for a narrow parcel of land with frontage on Cate Street and a small frontage on Bartlett Street. A number of variance requests were made in 2009 for a 60 unit residential apartment building and those variances were denied. The Planning Department has also worked with an abutting property owner for some time to rezone the industrially zoned parcels in the area from Bartlett Street to the US Route One By Pass. In May of this year, the principal of Jask Realty Trust withdrew that request and it was at that time that the owner of the subject parcel submitted a request for rezoning just this parcel.

In Mr. Taintor's Memorandum, he compared the requesting rezoning, which is Mixed Residence Business, both under the current zoning and proposed zoning changes which they will be talking about at their September 1st Work Session. It seemed they could go two ways. They could expand the existing Business district or they could look at this parcel in conjunction with other parcels in the area and do a study to look at rezoning to Mixed Residence Business. He is recommending that the Board recommend to the City Council that they expand the Business district to include this parcel. The allowed residential density in the Business district is three times the residential density that is currently allowed in the MRB district but equal to the density that will be allowed in MRB if the proposed changes are enacted. Therefore, in either case the lot would be allowed up to about 41 dwelling units as opposed to the 60 units that were proposed in 2009. Mr. Taintor discussed this with the Applicant's attorney and there did not seem to be any objection.

Mr. Rice made a motion to vote to recommend to the City Council that the parcel at the intersection of Cate and Bartlett Streets be rezoned from Industrial to Business.

Mr. Blenkinsop seconded the motion.

The motion passed unanimously.

Chairman Ricci stepped down and Vice Chair Roberts chaired the hearing.

B. Request from Martingale Wharf Limited Partnership, regarding 99 Bow Street, regarding encroachments.

Mr. Taintor noted that the Board has a long history with this project and it was very complicated and there have been changes made. The key issue is that as the project was being completed and the As Built Plan was being submitted to the City, they realized that two small encroachments were being made onto City property. The first is the bay window. Originally the bay window was on the portion of the building that was supposed to stay; however they ended up demolishing that section. The

second is an underground drain line which is a couple of inches off the edge of the building. Everything was built consistent with their approvals and it seems that these are appropriate easements. Mr. Taintor indicated he would be able to administratively approve the amendment to the approved Site Plan for the drain line if that easement is approved.

Mr. Blenkinsop made a motion to recommend to the City Council that they approve the two easements as requested.

Mr. Patenaude seconded the motion.

The motion passed unanimously.

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C. Request from Joseph R. Baroni Family, LLC regarding the acquisition of City owned land on Constitution Avenue.

Mr. Taintor explained that this proposal is for the City to convey to the owner of the abutting property a small tract of land that is within the curve of Constitution Avenue. The road was aligned to avoid a rock outcrop which split a parcel of land, with the majority being on the west side of the road and the small wedge being on the other side, abutting the Baroni parcel and two other parcels. The City did an analysis of the average assessed value of land in the area as it relates to the applicant's sale price, although that is not part of the Planning Board jurisdiction. The Planning Board's responsibility is simply to recommend to the City Council whether or not the land should be conveyed. The land does not seem to benefit the City in any way. The benefit to the property owner is that it would provide more flexibility for Site Plan with regard to setbacks and lot coverage, and would encourage a more valuable use of the land. As a result, his recommendation is that the Planning Board recommend that the Council approve the sale on such terms as it deems acceptable.

Mr. Blenkinsop made a motion to vote to recommend that the City Council approve the sale of the requested parcel on such terms as it deems acceptable.

Mr. Patenaude seconded the motion.

The motion passed unanimously.

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D. Request for rezoning of 1900 Lafayette Road.

Mr. Taintor stated that when the Board did the comprehensive revision of the Zoning Ordinance in 2009 the Planning Board had recommended that these seven parcels be rezoned from OR to the Gateway District but there was concern from residents in the Elwyn Park neighborhood, and the City Council elected not to move that rezoning proposal forward. There are currently only two undeveloped lots of those seven lots and one is slated to be developed for an Armed Forces Reserve Center, outside of any control of the City. That leaves only one lot that is vacant and would have to comply with this zoning district. In general Mr. Taintor would support the rezoning to Gateway but in this case the person requesting the re-zoning is only the owner of one of the seven parcels, so he

recommends a public hearing to give the other property owners and abutters an opportunity to weigh in on this.

Mr. Rice made a motion to schedule a public hearing on the proposed rezoning at the September Planning Board meeting.

Mr. Gladhill seconded the motion.

The motion passed unanimously.

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V. PLANNING DIRECTOR’S REPORT

Mr. Taintor advised the Board that TAC has been asked to have a Work Session with the Portwalk developers for the remaining lot which is currently the Municipal parking lot. The Planning Board is also going to have a work session with the HDC at their September meeting concerning both the Portwalk development and Phase 2 of the 30 Maplewood Avenue project. The developer of 30 Maplewood Avenue is scheduling his 4th r 5th Work Session with the HDC but neither the Planning Board nor TAC have had any opportunity to weigh in on this. Mr. Taintor felt these were both very important properties that are going to be the gateway to downtown and he has concerns with some of the concepts he has heard about. He recommended that the Planning Board hold a joint Work Session with the HDC on September 22nd to discuss these two properties. Sandra Dika, Chairman of the HDC, felt this was a very good idea. Chairman Ricci felt the Work Session made sense. He would like to schedule it at 7:00 on September 22nd.

Chairman Ricci advised the Board that there was a seating change this evening and it was based on tenure with the Board.

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V. ADJOURNMENT

A motion to adjourn at 7:50 pm was made and seconded and passed unanimously.

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Respectfully submitted,

Jane M. Shouse
Acting Secretary for the Planning Board

These minutes were approved by the Planning Board on October 20, 2011.