

MINUTES

PLANNING BOARD
PORTSMOUTH, NEW HAMPSHIRE

CITY HALL, MUNICIPAL COMPLEX, 1 JUNKINS AVENUE

7:00 P.M.

JANUARY 23, 2014
reconvened from
JANUARY 16, 2014

MEMBERS PRESENT: John Ricci, Chairman; John Rice, Vice-Chairman; Jack Thorsen, City Council Representative; David Allen, Deputy City Manager; Richard Hopley, Building Inspector; William Gladhill; Colby Gamester; Elizabeth Moreau, and Michael Barker

MEMBERS EXCUSED: Jay Leduc, Alternate

ALSO PRESENT: Rick Taintor, Planning Director

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Mr. Rice made a motion to take Items C & D under New Business out of order. Mr. Barker seconded the motion. The motion passed unanimously.

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C. The application of **Ertugrul Yurtseven, Owner**, for property located at **292 Lang Road**, requesting Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within a wetland buffer, to construct a 15' wide paved driveway, with 4,885 s.f. of impact to the wetland buffer. Said lot is shown on Assessor Plan 287 as Lot 4 and lies within the Single Residence B (SRB) District.

The Chair read the notice into the record.

Deputy City Manager Allen made a motion to postpone this matter to the February 20, 2014 Planning Board Meeting. Mr. Rice seconded the motion.

The motion to postpone Conditional Use Permit approval to the February 20, 2014 Planning Board meeting passed unanimously.

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D. The application of **Strawbery Banke, Inc., Owner**, for property located off **Washington Street**, requesting Site Plan Approval to construct a 12,500 s.f. seasonal ice skating rink with an 8' x 10' transformer, a 25' x 10' rink chiller and a 25' x 60' concession pavilion, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 104 as Lot 7 and lies within the Mixed Residential Office (MRO) District and the Historic District.

The Chair read the notice into the record.

Mr. Taintor indicated this application had not finished its review before the TAC Committee.

Deputy City Manager Allen made a motion to postpone this matter to the February 20, 2014 Planning Board Meeting. Mr. Rice seconded the motion.

The motion to postpone Site Plan approval to the February 20, 2014 Planning Board meeting passed unanimously.

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IV. PUBLIC HEARINGS – OLD 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 **Ertugrul Yurtseven, Owner**, for property located at **292 Lang Road**, requesting Final Subdivision Approval to subdivide one lot into four lots with the following:
- a. Proposed Lot 4 having 87,153 ± s.f. (2 acres) and 201.36' ± of continuous street frontage on Lang Road.
 - b. Proposed Lot 4-1 having 405,342 ± s.f. (9.31 acres) and 384.05' ± of continuous street frontage on Lang Road.
 - c. Proposed Lot 4-2 having 177,434 ± s.f. (4.07 acres) and 100' ± of continuous street frontage on Lang Road.
 - d. Proposed Lot 4-3 having 140,181 ± s.f. (3.22 acres) and 310.87' ± of continuous street frontage on Lang Road.

Said lot is shown on Assessor Plan 287 as Lot 4 and lies within the Single Residence B (SRB) District where a minimum lot area of 15,000 s.f. and 100' of continuous street frontage is required. (This application was postponed at the January 16, 2014 Planning Board meeting.)

The Chair read the notice into the record.

Mr. Taintor gave some background on this application. An initial plan was submitted for a Conditional Use Permit and the Environmental Planner wrote a negative recommendation in his Memorandum to the Conservation Commission due to some concerns about the impacts to surrounding wetlands. The applicant came back and revised the subdivision plan and moved the driveway out of the wetland buffer. The only way to do that was to put the driveway across the adjoining lot. Subsequent with this, the Board changed their Subdivision Regulations in November to require automatic referral to TAC for certain types of subdivisions and those included subdivisions with access easements or shared driveways. Mr. Taintor spoke to the applicant and Mr. Berry indicated he will be requesting a waiver of the regulation requiring a referral to TAC. Mr. Taintor stated he did not have a perspective on the waiver one way or the other but he has prepared a couple of draft motions if the Board wants to move ahead with the application rather than refer to TAC.

SPEAKING TO THE APPLICATION:

Christopher Berry with Berry Surveying/Engineering presented. Mr. Berry indicated that at the December Planning Board meeting, the Board referred this application to the Conservation Commission for a Conditional Use Permit as they originally had a driveway going through the 100'

buffer. They prepared engineering documents and plans for that Conditional Use Permit application and received a negative recommendation from the Environmental Planner so they tried to simplify the application by sliding the driveway over. They now have an easement on the center lot. As Mr. Taintor articulated, that would typically necessitate a referral to TAC per the new regulations. Mr. Berry discussed the potential request for a waiver and the reason is not to circumvent any technicality but it is their opinion that the easement for the driveway for proposed lot 4-4 is very simple in nature and the construction of the proposed driveway would also be very simple. There are gentle slopes within the area so there would not be any large technical design to go with it. He hopes the Board looks favorably on that so that they can proceed forward. Nothing else has changed on the plan except for the driveway access.

Ms. Moreau asked if they have they actually drafted an easement for review by the City. Mr. Berry stated they have not but it could be a stipulation. It would be a typical driveway easement with a typical recorded maintenance agreement.

Chairman Ricci referred to the infiltration basin detail. Mr. Berry responded that at the last meeting, the Chairman had asked them to look at utilizing infiltration basins for the individual houses. There are a series of notes on the plans, stating there needs to be two devices per house. Chairman Ricci noted that the seasonal high water tables are 2.5'. He was troubled by the fact that that no proposed footprints or grading are shown on the plans. He knows where the leaching area goes but each house will probably have 2 - 3' of fill. He is concerned how the houses are going to sit on the lots. He is going to make the statement that a footprint be shown. Grading, infiltration basins and where the leaching areas go are very critical and they are not shown. He had a real concern that the most important things on the plan are not shown.

Mr. Berry acknowledged that they will have to provide a sewage disposal system design for NHDES and he asked if that style plan was what he was looking for. It would show a typical house and where they would put the effluent disposal field and where the basins would be sited. Chairman Ricci agreed that plan would probably be what he was looking. If these were 10 acre lots they could be pretty fancy with their footprints but he assumed these will be a certain size. There is a lot going on and he felt grading for the driveways is also critical. Something similar to the subsurface disposal plan mirrored on the subdivision plan would probably meet their needs.

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

Deputy City Manager Allen made a motion to refer this application to TAC for the reasons that have been stated. He felt there are enough issues so that it would be good to have TAC take a look at it, share their expertise and make any comments they may have. That would give the applicant a chance to address some of the issues before it came back to them. Mr. Rice seconded the motion.

Chairman Ricci asked Mr. Taintor if TAC will be advised of the Planning Board's concerns and comments. Mr. Taintor confirmed that he heard building footprint, grading, fill, driveway grade and basically the subsurface disposal permit plan. Chairman Ricci stated he would like to see a mini-site plan for each lot.

The motion to refer the Preliminary and Final Subdivision application to TAC passed unanimously.

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V. PUBLIC HEARINGS – NEW BUSINESS

A The application of **North Mill Realty Trust, Owner**, and **3S Artspace, Applicant**, for property located at **319 Vaughan Street**, for a second one-year extension of Conditional Use Permit Approval under Section 10.1017 of the Zoning Ordinance, where approval was originally granted by the Planning Board on February 16, 2012 and a one year extension was granted by the Planning Board on January 24, 2013, for 919 s.f. of impact within a tidal wetland buffer, including the construction of a patio, a seating wall and a walkway. Said property is shown on Assessor Map 124 as Lot 9 and lies within the Central Business (CB), 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. He stated they are looking for a second one year extension of the Conditional Use Permit approval as the project will be starting to move forward in the next 2-3 months. The Site Review approval was extended and has not expired. They have a Shoreland Permit from NHDES. They have added a particular species for the buffer plantings in the open space area by the North Mill Pond. They also put some notes on the drawings regarding the Conservation Commission recommendation that the sidewalk in the rear, by the Mill Pond, be constructed as porous. Otherwise, it is the same plan that they saw in Site Review where they had made some changes to the layout from the original approval.

Mr. Hopley asked for the status of the proposed easement for the adjacent property owner for the back exit. Mr. Chagnon did not believe that had been filed yet but they have worked with the neighbors and they are waiting for a building permit to be issued and for construction to begin.

Mr. Hopley asked if the easement would be part of the Site Plan approval. Mr. Taintor confirmed it would be required prior to the building permit being issued.

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 a second one year extension of Conditional Use Permit approval. Ms. Moreau seconded the motion.

The motion to grant a second one year extension of Conditional Use Permit approval passed unanimously.

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B. The application of **Pine Siskin, LLC, Owner**, for property located at **219 Gosport Road**, requesting Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within a wetland buffer, to construct a 35' x 16' in-ground pool and associated patio, with 1,242 s.f. of impact to the wetland buffer. Said property is shown on Assessor Map 224 as Lot 10-11 and lies within the Single Residence A (SRA) District.

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Steve Riker, from Sandpiper Environmental Services, addressed the Board on behalf of the owner. He was last before the Board on October 17th with a similar proposal. They have since reduced the size of the pool by about a third. The pool is now 16' x 35'. Everything else on the plan remains the same. They still have a 3,611 s.f. buffer planting area, the impervious, as a result of reducing the pool, has decreased to 1.2%. The original pool footprint on October 17th was 800 s.f. and it is now 560 s.f.

Without going through the entire plan again, he wanted to address some concerns of that the Conservation Commission had on January 8th as well as some concerns in the Staff report for tonight's meeting. One concern is the impervious surface but it is only 1.2% increase. Regarding alternative locations, the plan showed one alternative location and, looking at the criteria, he was not sure it was reasonable to place a pool within 20' of the road. The Conservation Commission suggested it could go directly between the house and the lot located on Map 224, Lot 10-10 however the topographical grade starts at 104 and decreases to 98 which is a change of about 6' so it is too steep and not feasible. The only other feasible location would be the front yard. He would really like the Board to consider the impact of putting a pool in the front lawn of an upscale neighborhood and there are no other swimming pools located in front yards that he is aware of. They could probably argue what reasonable means all night long. The proposed location is nice and flat and makes sense but unfortunately is within the 100' buffer. There were also concerns about construction and he has spoken with New England Pools about how a pool like this would be constructed and it is pretty straight forward. Essentially, a hole is dug to the size of the pool, 6' deep. The original application had a pool that was 8' deep so they have also reduced the depth of the pool by 2'. The pool would be constructed of gunite and reinforced with steel rebar and the hole would be back filled with crushed gravel. It is currently maintained lawn where the pool would go so the construction envelop would again be replaced with lawn. Another concern of the Conservation Commission was blasting. Mr. Riker spoke to the construction supervisor who advised him that Custom Pools has a policy that they do not blast at all as they do not want to have that liability. There is a ledge outcrop but they have reduced the pool to avoid the ledge. If they did come in contact with the ledge, they would use a sledge hammer to remove it. This would be a salt water pool, which is the most environmentally friendly pool you can have. Buffer plantings areas remain the same size. The only thing that changes are some impervious calculations and some impact calculations based on the size of the pool. Mr. Riker asked for questions.

Chairman Ricci advised the Board that Peter Britz, the City Environmental Planner, was present if anyone had any questions.

Ms. Moreau mentioned the change in topography which prohibited putting the pool on the side of the house and she asked if it is a hill or a slight slope. She asked if a retaining wall would be feasible. Mr. Riker stated that they could. If they were to bring in fill to create a flat spot to put a pool in, they would have essentially have about 16' of run with a 3:1 side slope. That would be a lot of fill and the fill would probably encroach onto the neighbor's property. Ms. Moreau asked how close is the house to that property line. Mr. Riker stated it would be stated it would be within 5' of the property line.

Mr. Hopley asked if they explored the left hand side of the property. There appears to be a considerable side yard. Mr. Riker pointed out that there is a fresh water wetland and there is a 100' wetland buffer that goes right through the middle of the house.

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

Deputy City Manager Allen stated that for the sake of discussion he would move to deny the application. Mr. Gladhill seconded the motion.

Ms. Moreau did not feel that it was the most desirable place to put it outside the buffer but it is possible to put it outside the buffer which was why she was against it.

Councilor Thorsen indicated that his impression was that they have worked through a lot of the issues brought up and answered quite a few of them and he asked if the questions have been answered sufficiently. As he goes through the five criteria, he sees that everything has been possibly satisfied except the issue of being in the buffer itself. The question appears to be whether they want a pool in the buffer.

Chairman Ricci felt that certain applications come before the Board that lead to Pandora's Box being opened up and he felt this is one of them. He did not believe this application shows no adverse impact and he thinks this project could cause precedent for the neighborhood and the City. They have denied a previous pool in a wetland buffer. There is another area where it could be placed or at some point they just have to say that it is not feasible to put a pool on this lot. He felt an application like this could have consequences down the road. He will support the motion.

The motion to deny Conditional Use Permit Approval passed with a vote of 10-1, with Councilor Thorsen voting in the negative.

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VI. PLANNING DIRECTOR'S REPORT

Mr. Taintor pointed out that the new Pease Development Authority Land Use Regulations were provided to the Board this evening. Activities that happen on Pease are not subject to the City's ordinance but rather Pease has their own regulations. Also, the Planning Board does not actually make a decision but makes a recommendation to the PDA Board of Directors.

Mr. Taintor stated that they will be having three public hearing in February on land use regulation issues. They will have a public hearing on the Form Based Zoning as they will have had the public informational Work Shop. They will possibly be bringing back some amendments based on that so they will perhaps be bringing a revised Planning Board recommendation to the City Council.

The second public hearing will be on the motion to eliminate the Conditional Use Permit which has passed 1st reading. Last year the City Council voted to require a Conditional Use Permit for buildings above 45'. The maximum height limit is still the same 50' or 60' depending on whether they are in CBA or CBB and there is now a Conditional Use Permit by the HDC to allow any building to allow to go between 45' – 60'. There was a motion to eliminate that to make it a flat 45' building height across the CBA and CBB districts.

There is also a request by the City Council for the Planning Board to investigate the Design Review process. Because that is not a Zoning Ordinance regulation and is a Planning Board regulation a change would require a public hearing.

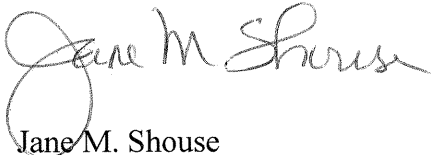
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VII. ADJOURNMENT

A motion to adjourn at 7:32 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 at the May 15, 2014 Planning Board meeting.