

**MINUTES**

**PLANNING BOARD  
PORTSMOUTH, NEW HAMPSHIRE**

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

**7:00 P.M.**

**SEPTEMBER 18, 2014**

**MEMBERS PRESENT:** John Ricci, Chairman; John Rice, Vice-Chairman; Jack Thorsen, City Council Representative; David Allen, Deputy City Manager; Robert Marsilio, Building Inspector; William Gladhill; Colby Gamester; Elizabeth Moreau, Michael Barker, Jay Leduc, Alternate; and Justin Finn, Alternate

**MEMBERS EXCUSED:** na/

**ALSO PRESENT:** Jessa Berna, Associate Planner

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**I. APPROVAL OF MINUTES**

- A. Approval of Minutes from the April 17, 2014 Planning Board Meeting – Unanimously approved.
- B. Approval of Minutes from the May 15, 2014 Planning Board Meeting – Unanimously approved.

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**II. PUBLIC HEARINGS – OLD BUSINESS**

A. The application of **Borthwick Forest, LLC, Owner**, for property located **between Islington Street and Borthwick Avenue**, requesting Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within an inland wetland buffer to construct a road from Borthwick Avenue to Islington Street in connection with a proposed subdivision, with 10,700 s.f. of impact to the wetland buffer and 5,800 s.f. of wetland buffer restoration. Said properties are shown on Assessor Plan 233, as Lots 112 & 113 and Assessor Plan 241 as Lot 25 and lie within the Single Residence B (SRB) District and the Office Research (OR) District. (This application was postponed at the June 19, 2014 Planning Board meeting.)

Mr. Rice made a motion to postpone this matter to the February 19, 2015 Planning Board meeting. Mr. Gamester seconded the motion.

The motion to postpone Conditional Use Permit approval to the February 19, 2015 Planning Board meeting passed unanimously.

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B. The application of the **Frances T. Sanderson Revocable Trust and Lynn J. Sanderson Revocable Trust, Paul G. Sanderson, Trustee, Owners, and Spinney Road Land Holdings, LLC, Applicant**, for property located **off Spinney Road and Middle Road**, for Preliminary and Final Subdivision Approval to subdivide two lots into five lots with a new public right-of-way, with the following: Lot 5 on Assessor Map 167 having 263,937 s.f. (6.06 acres) and Lot 24 on Assessor Map 170 having 183,362 s.f. (4.21 acres), to be consolidated and subdivided into seven separate lots, including a public right-of-way, as follows:

- a. Proposed Lot #1 consisting of 15,121  $\pm$  s.f. (0.35 acres) and 114.71' of frontage on the proposed right-of-way.
- b. Proposed Lot #2 consisting of 15,432  $\pm$  s.f. (0.35 acres) and 103.10' of frontage on Middle Road.
- c. Proposed Lot #3 consisting of 29,511  $\pm$  s.f. (0.68 acres) and 100' of frontage on the proposed right of way.
- d. Proposed Lot #4 consisting of 29,475  $\pm$  s.f. (0.68 acres) and 100; of frontage on the proposed right of way.
- e. Proposed Lot #5 consisting of 16,075  $\pm$  s.f. (0.37 acres) and 100' of frontage on the proposed right of way.
- f. Proposed Lot #6 (non buildable) consisting of 209,762  $\pm$  s.f. (4.82 acres) and 66.30' of frontage on Thaxter Road.
  
- g. Proposed Lot #7 (non buildable) consisting of 106,549  $\pm$  s.f. (2.44 acres) and 82.11' of frontage on the proposed right of way.

Said properties are located in the Single Residence B (SRB) District which requires a minimum lot size of 15,000 s.f. and 100 ft. of continuous street frontage. (This application was postponed at the August 21, 2014 Planning Board meeting.)

The Chair read the notice into the record.

**SPEAKING TO THE APPLICATION:**

Christopher Berry, of Berry Surveying and Engineering, addressed the Board on behalf of Spinney Land Holdings. Also present was Attorney Jonathan Springer. At the last meeting, the Planning Board asked them to revise some items in the plan set and they tried to address all of those items. They added vegetation to the slope between the top of the roadway and the biomedica elevation within the raingarden for safety reasons as well as adding a split rail fence. There were greater concerns on Lot #4 and they reduced the size of the structure on that lot, proposed a 9' wall in the back of the foundation and proposed grading around the structure. There were grading questions on Lot 1 and Lot 2 and they proposed revised grading on both lots to be more consistent with how the lots will be built out. There was a question regarding spot grading at the entrance where it was shallow and they have proposed spot elevations within the first 25' of the center line.

Attorney Jonathan Springer, representing the applicant, said there was a meeting this afternoon at City Hall with City Attorney Bob Sullivan, Jessa Berna of the Planning Department, Director of Public Works Peter Rice, John Lyons and Attorney Loughlin. He had submitted a proposed easement deed and a homeowner's deed to address the easement issues for flowage, the drainage structures and the issue of a public vs. private roadway. They agreed today that they made progress and they agreed they should ask for a postponement until the October Planning Board meeting to discuss these issues further. They would like to review input regarding Mr. Berry's plan revisions but the two main legal issues are whether it should be a private vs. public road, whether they should have a homeowner's

association or not and today they talked about doing it as a public road. They have to address the drainage structures, putting the Homeowner's Association in place and also perhaps have a small escrow fund to assure the maintenance of the drainage structures. It was felt by the participants in today's meeting that an additional 30 days would be enough time to resolve these issues to the satisfaction of everyone involved.

Ms. Moreau asked if they have dealt with the abutter's claim about the boundary dispute between Map 168, Lot 11 and this property. Mr. Berry said that to-date they have not as they are confident in the boundary they have proposed. When this shows up on a survey plan they look at those lots very closely and they are confident in the boundary decision that was made. Further clarification could be provided if requested. Ms. Moreau thought they could possibly consider granting her an easement of the strip of land that her house sits on.

Chairman Ricci asked for an update from City Attorney Sullivan. Attorney Sullivan said his only involvement is due to the unusual fact that administrative staff is unable to come up with a recommendation to the Planning Board on the ownership, operation and maintenance responsibilities for the road and the drainage structures. City concerns relate to maintenance obligations and potential liability related to the project as it is being put into an area that historically has flooding, issues with downstream property owners and the project will add sufficient impermeable surface to the area that was flooding even before adding the new structures. There was some reluctance of City Staff to assume all responsibility and liability for these items. In other parts of the City there have been claims where the City is responsible for downstream drainage issues that arise as a result of the approval of this Board for projects which increased the impermeable surface upstream of the properties from which the complaints arise. Notwithstanding some significant effort, at this time there is no recommendation for the Board but as a result of today's meeting they think the outline of a proposed recommendation has at least had its germ. It will probably be a situation where the City takes responsibility for the road however the drainage structures and all related issues would be a private responsibility, probably of a homeowners association formed by the owners of the lots. They hope to address issues of abutting property owners as well.

Councilor Thorsen asked if a determination has ever been made in the case Attorney Sullivan mentioned regarding the liability of the City. Attorney Sullivan stated there has not been a determination and no money has been paid on account of that claim yet.

Mr. Gladhill asked if the Board could vote on an application while there is a property line dispute. Attorney Sullivan had not been involved in that issue but, in general, he would be extremely concerned about approving a subdivision when it is not clear where the property lines are.

Deputy City Manager Allen had a concern if they went with a private street the subdivision plan would have to completely change. Attorney Sullivan agreed there was no possible way the current plan could work with a private street arrangement without the establishment of a Homeowner's Association that would have to meet the requirements that the Board would have to set for them.

Attorney Springer confirmed that they came out of TAC with a recommendation for a public road. They are not arguing with City staff over anything and will be happy to do it anyway the City wants. They have agreed to use the language requested by Attorney Sullivan regarding City liability in the proposed deed. Also, on the boundary line issue, they are happy to talk to the neighbor and explore that, but he does not believe there is any reason why the Board cannot proceed with this survey.

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. Moreau made a motion to postpone this matter to the October 16, 2014 Planning Board meeting. Mr. Gamester seconded the motion.

Ms. Moreau felt that a homeowners association taking care of and being responsible for the raingardens along with a public street seems like the best compromise. She would lean towards that as a good resolution.

Mr. Gladhill requested a resolution to the boundary dispute prior to the October meeting or at least some historical documentation on why they believe the boundary line is where they say it is. Chairman Ricci was not overly concerned about the boundary dispute because they have a stamped plan from a licensed land surveyor. He would also like to see it resolved but, if it isn't, he doesn't believe it is a showstopper.

Mr. Rice referred to the awkward driveway on Lot #2 and asked about the setbacks for a driveway. Chairman Ricci referred to the easements they added this month to the plans and also pointed out that driveways do not have a setback.

The motion to postpone Preliminary and Final Subdivision approval to the October 16, 2014 Planning Board meeting passed unanimously.

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**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 **Great Bay Community College, Applicant**, for property located at **320 Corporate Drive**, requesting Site Plan Approval to construct a 2-story building expansion with a footprint of 20,000 s.f. ±, on the east side of the existing building, including a parking lot expansion resulting in the addition of 27 new parking spaces, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 315 as Lot 4 and lies within the Airport Business Commercial (ABC) district.

The Chair read the notice into the record.

**SPEAKING TO THE APPLICATION:**

Patrick Crimmins, of Tighe & Bond, appeared on behalf of the applicant, Great Bay Community College. Also present was Alice Carey, of JSA Architects. In June they met with the Board for an expansion of the gymnasium. The June expansion was planned on the west side of the building with some fairly significant changes in the parking lot layout. Since that approval, the project team has taken a hard look at pricing and due to budget constraints they looked at the east side of the building and found that it worked as a more cost effective construction solution. They are proposing a 20,000 s.f. expansion on the east side of the building which includes new paving, new parking spaces along

the front of the building with a net gain of zero parking spaces; they have some new sidewalks, a front entrance and side entrance with s ramp and stairs; the proposed dumpster is in the rear; and a reconfigured loading dock to accommodate the expansion. The purpose of this expansion is to limit the scope of the project with limited budgets.

This design is virtually the same gravel wetland design that they saw in June. It meets the NH DES standards for Alteration of Terrain and they will be submitting that permit application next week. The roof drain will feed into the gravel wetland and they will also be picking up the existing parking area drainage. They are enhancing stormwater on the site significantly.

Most utility connections will be internal. There is an existing sewer service that runs out to Corporate Drive which needs to be moved because the expansion is being constructed on top of it. They are proposing a new sanitary service and a new grease service out of the front that is ultimately going to connect into the new line with a new manhole. As previously designed the sewer line runs under the gravel wetland with a 2" rigid insulation below the gravel wetland as a safety net for any concerns with frost, although the gravel wetland does provide 5' of cover.

They tried to scale the site design back to save on the cost of the project. They met with TAC on September 2nd and received a favorable recommendation with the following stipulations:

1. The sewer service through the gravel wetland shall be replaced with an SDR pipe unless video is completed that can show that the plastic pipe does not have the potential to collapse.

They actually researched this pipe. He was not present at TAC to speak to this but this pipe was constructed in 2008 as an SDR 35 pipe. The old sewer service used to run out the back of the building but it was rebuilt in 2008. He is quite confident the pipe is in good working condition and they also put notes on the plan that during the construction the contractor will coordinate with the engineer on the pipe material and the condition of the pipe.

2. Whether or not it is replaced, the sewer service through the gravel wetland shall be insulated with overlapping sections of 2" rigid insulation, and a detail of the insulation shall be added to the plans. T

That is reflected as a grey hatch underneath the gravel wetland, it is reflected in a utility trench detail on Sheet C-10 and also called out on the gravel wetland detail on Sheet C-11.

3. The existing corrugated metal pipe drain lines shall be replaced

This refers to two elliptical pipes that cross the driveway and the City and the PDA has a concern with the condition of those pipes so they are proposing to replace them with an RCP pipe.

4. A sidewalk shall be installed from Corporate Drive to the new addition along the driveway access.

They received the same stipulation on the last round of approvals but, given budget constraints, they do not wish to construct it. The gravel wetland is built so that a 5' shelf is available to construct a sidewalk in the future if funds become available.

5. Additional bicycle racks shall be provided on the east side of the proposed addition, at the new major entrance.

They are providing four staple racks at the front entrance and four staple racks at the new gymnasium entrance.

6. Sheets 4B and 5B, showing a potential future expansion, shall be removed from the plan set in order to avoid future confusion about what has been approved.

They had previously shown a phased plan for a potential expansion that involved extending the parking area out but Great Bay does not want to construct that at this time. There are 13 spaces being displaced but they are being replaced in the front. As the City does not like phased plans, those future plans were removed.

7. The applicant shall add a landscaping plan to the plan set per the PDA regulations

They added some trees around the building.

8. The applicant should consider relocating the gravel wetland closer to Corporate Drive in order to facilitate the construction of a sidewalk and a future expansion of the parking area.

The gravel wetland is located with a shelf wide enough to build a 5' sidewalk next to it but at this time they are not prepared to shift that gravel wetland. Moving the wetland out would be significantly more costly and they would also have to remove a tree.

Mr. Marsilia asked if the existing building will be in use during construction and what was the duration of construction would be. Mr. Crimmins confirmed that the existing building will be in use during construction. Alice Carey, of JSA Architects, stated that construction will begin this fall and is expected to be completed in the fall of next year. Mr. Marsilia asked about their lay down area. Ms. Carey pointed out the northeast corner of the parking lot which will be their lay down area. The main entrance will be the construction entrance. Mr. Marsilia stated he would like to see a laydown drawing to see how they will separate it from the parking area when they apply for their building permit.

Michael Mates, of the PDA, introduced himself and indicated he was available for any questions.

Chairman Ricci referred to Sheet 5, Grading, Drainage and Erosion Control Plan, and asked if it would make sense if they put a light lime weight for the sewer line that is going in. It would be nice to overlay the other utilities on the drainage plan so that whoever is digging it would be aware of it. This was just a comment and not a stipulation.

Mr. Rice asked if any new parking was being constructed. Mr. Crimmins confirmed there would be no new parking and they were only making up the parking that is being lost.

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. Moreau made a motion to recommend to the PDA that site plan approval be granted with the added stipulation regarding the sewer service.

Mr. Rice seconded the motion.

The motion to recommend site plan approval passed unanimously with the following stipulation:

- 1. The sewer service through the gravel wetland shall be replaced with an SDR plastic pipe unless a video is completed which can show that it is a new plastic pipe and does not have the potential to collapse.

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B. The application of **Portwalk HI, LLC and Hanover Apartments, LLC, Owners**, for property located at **195 Hanover Street**, requesting Amended Site Plan approval to relocate a curb and widen a sidewalk along Hanover Street, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 125 as Lot 1 and lies within Character District 5 (CD5), the Downtown Overlay District (DOD) and the Historic District.

The Chair read the notice into the record.

Mr. Gamester recused himself

**SPEAKING TO THE APPLICATION:**

Patrick Crimmins, of Tighe & Bond, explained that while locating the tree wells they found a conflict with the duct back that runs down the Hanover sidewalk. They originally thought there was enough space but have since realized that is not the case. They have worked closely with DPW to provide a revised design for the Hanover Street sidewalk which pushes out the sidewalk 3 ½' and allows the tree wells to fit between the curb line and the new duct bank. The old tree well location moves further down to the corner of Hanover Street because there is a vault that conflicts with that which they cannot avoid. They shifted the landlines and softened the curb radii at Hanover Street which will help with truck turning. They have widened the sidewalk so they have actually enhanced the pedestrian sidewalk experience, it is actually an improvement and a win-win for everybody.

Ms. Moreau was concerned there are a lot of buses that take this corner up to the busstop. They are now moving the center line of the street over closer to the far side. There is just barely enough room now for a bus to make the corner. Ms. Crimmins responded that the lane width is not changing and is just shifting out and will actually help with the bus movements by pulling that curb radii back. Ms. Moreau's concern was the other side of the road. Mr. Crimmins stated this is a design that they worked closely with DPW on and they are comfortable with the width.

Deputy City Manager Allen stated he had the same concerns and when this was initially brought up DPW looked at this very closely. The trend towards narrower lanes is becoming standard. They have worked very closely with the designers to make it work. Ms. Moreau stated she is fine with this if Mr. Allen is fine with it.

Councilor Thorsen assumed there must be a minimum width for the lanes and he asked how close they were to that with this reconfiguration. Mr. Crimmins said the City minimum is an 11’ lane and that is what they are showing.

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. Moreau made a motion to grant amended site plan approval subject to all prior approvals.

Deputy City Manager Allen seconded the motion.

Councilor Thorsen noted that not everybody parks properly and, if they are at the minimum lane width, he asked if they will run into a problem. Deputy City Manager Allen stated the average bus vehicle width is 8’ and the lane widths are set to allow for variables, such as bad parking. From an engineering point of view, he is very comfortable with this 11’ lane width.

The motion to grant amended site plan approval subject to all stipulations of prior approvals passed unanimously.

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**IV. CITY COUNCIL REFERRALS/REQUESTS**

A. Proposed amendment to the Zoning Ordinance, Section 10.440, Table of Uses – Residential, Mixed Residential, Business and Industrial Districts, to change use #1.41 (Multifamily dwelling, 3 or 4 dwelling units) from “P” (permitted) to “S” (special exception in the General Residence A and B (GRA and GRB) districts.

Jessa Berna, Associate Planner for the City, indicated that last month the City Council had requested a recommendation from the Planning Board on the issue of changing a multi-family 3-4 dwellings from “permitted” to “special exception” and the Board voted to recommend that change. She explained that a special exception is an allowed use and would simply provide the opportunity for a public hearing at the Board of Adjustment to give input and mitigate for any adverse effects. Since then, they have become aware of how their ordinance is written and there is a separate line for townhouses which are attached with a fire wall separating them. It was really an oversight not to include townhouses in the original amendment. The intent was to look at multi-family in general and the density, and not the design feature. The unintended consequence is that by right someone can build a townhouse but not another style of 3-4 unit multi-family. This is just an attempt to rectify this and have the Planning Board make a recommendation to change townhouses to “special exception” in the GRA and GRB districts. City Attorney Sullivan has advised that this change would not require a new public hearing and can keep on track at the City Council for their second reading as this would only be a technical change and wouldn’t change the intent. They are therefore looking for an updated recommendation to the City Council regarding this zoning amendment.

Deputy City Manager Allen spoke with Nicholas Cracknell, the Principal Planner for the City, and he laid out some scenarios where this could affect a neighborhood and there are around 70 lots that this would affect. This is a prudent way to have the BOA take a look at this before someone is allowed to do this. He is in favor of it.



Ms. Moreau made a motion to recommend that the City Council adopt the proposed Zoning Ordinance amendment as amended, with the inclusion of use #1.30 (Townhouse) as well as use #1.41 (Multifamily dwelling – 3 or 4 dwelling units).

Mr. Barker seconded the motion.

The motion passed unanimously.

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**V. PLANNING DIRECTOR’S REPORT**

- A. A report was given on the status of conditionally approved Site Plan Applications.
- B. A report was given on the status of conditionally approved Subdivision Applications.

Councilor Thorsen questioned the approval that was received in 2009 and was currently in violation. Chairman Ricci requested that staff could look at that and move those off the list.

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**VI. ADJOURNMENT**

A motion to adjourn at 8:55 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 October 16, 2014 Planning Board Meeting.