

MINUTES

**PLANNING BOARD
PORTSMOUTH, NEW HAMPSHIRE**

CITY HALL, MUNICIPAL COMPLEX, 1 JUNKINS AVENUE

7:30 P.M.

AUGUST 18, 2016

MEMBERS PRESENT: John Ricci, Chairman; Elizabeth Moreau, Vice Chairman; Nancy Colbert-Puff, Deputy City Manager; David Moore, Assistant City Manager; William Gladhill; Colby Gamester; and Dexter Legg

ALSO PRESENT: Mr. Taintor, Planning Director;

MEMBERS ABSENT: Rebecca Perkins, City Council Representative; Jay Leduc; Jody Record, Alternate

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6:00 pm A Non-Meeting with Counsel was held.
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WORK SESSION ON PROPOSED ZONING ORDINANCE AMENDMENTS

Mr. Taintor explained that revisions since the last meeting to the proposed zoning amendment for accessory dwelling units (ADU) incorporates the changes discussed in the previous work session. He highlighted significant changes as follows:

- Defining separate conditions for attached versus detached ADUs. The State law indicates that a community does not have to provide regulation for detached accessory dwelling units (DADU). Although, if regulation would apply to DADUs, then the ordinance would have to comply with all regulations applicable to a single family dwelling.
- The proposed draft ordinance would allow for converting a garage into an ADU. Under the statute, it would not be possible to provide an exception for existing DADUs.

Vice Chairman Moreau felt it may be best to avoid drafting an ordinance pertaining to DADUs until the statute is modified. Mr. Taintor noted that one exception states the lot area cannot be increased for the ADU.

Mr. Taintor reviewed other highlighted significant changes as follows:

- Article 4, Section 10.440 – The ADU must be allowed in every district, however, DADUs can be restricted to specific districts. A consideration would be had on whether the allowance is by right or by Planning Board.
 - Vice Chairman Moreau felt that initially the Planning Board should review all ADUs.
 - Mr. Gladhill asked whether the Historic District Commission would have any leverage over the appearance of a proposed ADU or DADU. Mr. Taintor suggested that concise standards regarding additions could help the HDC enforce regulations that apply to

- ADU, which would be similar standards for single family dwellings. Chairman Ricci suggested that there be verbiage outlining the process for an ADU application in regards to the HDC. Mr. Taintor reminded that if the existing lot does not meet standards, then the feasibility of the ADU would be unlikely. Mr. Gladhill felt that the statute has imposed unintended negative consequences. He explained that it may be difficult to achieve what the state intended without experiencing other community factors.
- Mr. Legg pointed out that several concerns were raised regarding short-term rentals. Mr. Taintor stated that the regulation for ADUs must be in place before any regulation regarding short-term rentals can be introduced. Mr. Legg thought that since the State did not take action for short-term rentals that communities would have their own ability to act on it.
 - Mr. Taintor reminded a point previously made by Ms. Colbert-Puff concerning the differentiation between single family homes with an ADU versus two-family dwellings.
- Article 8, Section 10.814.21 – Vice Chairman Moreau suggested to add ‘ownership’ after ‘condominium’.
 - Article 8, Section 10.814.22 – Vice Chairman Moreau suggested to strike all the verbiage after ‘owner of the dwelling’.
 - Article 8, Section 10.814.34 – Various comments were made regarding this section. Mr. Gamester explained that several houses have two entrances to the house that still look like the original house. Mr. Gladhill explained that traditionally a colonial with an L on a corner lot already has a door on the street side making this section difficult to apply to all types of homes. Mr. Legg and Chairman Ricci felt that Section 10.814.33 captures the intent of this section. The Board reached consensus to delete proposed Section 10.814.34.
 - Article 8, Section 10.814.40 – The section implies that an ADU would be subject to all the regulations of a single family dwelling.
 - Section 10.814.41 – This aligns with the State requirements. Chairman Ricci thought it is reasonable for a house with more than 2 acres to allow for increased square footage.
 - Section 10.814.42 – It was noted that the maximum floor area of an ADU in other West coast communities ranged between 640 to 1,000 s.f. or utilized a sliding scale or percentage.
 - Section 10.814.43 – This section indicates that the maximum size is approximately as large as a two-car garage. It would have no windows or doors to minimize visibility to the abutter. The 15-foot roof requirement is from the top of the roof. Mr. Moore suggested that an ADU with an existing window should keep the window.
 - Vice Chairman Moreau questioned the purpose for defining conditions for a DADU. Mr. Taintor explained they are usually allowed by variance with financial hardship. He felt it would make the most sense to define the requirements in single residence districts.
 - The Board reached consensus to make no changes to Section 10.814.40 through 10.814.44.
 - Article 8, Section 10.814.50 – Mr. Moore echoed what Councilor Perkins stated in writing, but felt that a one size fits all approach to parking may not be feasible. He suggested it could be beneficial to separate by neighborhoods. Ms. Colbert-Puff suggested that it be a standard in the conditional use permit and be decided by the Board the number of allowable parking spaces. Mr. Gladhill thought it is important to require where the parking be located. Vice Chairman Moreau agreed that it should be reviewed specific to each neighborhood. Mr. Gamester

supported a conditional use permit standard as it provides more flexibility. Mr. Legg and Chairman Ricci thought it be best to be more restrictive initially.

- Article 8, Section 10.814.70 – Mr. Taintor noted that Dover, NH introduced this same type of certificate requirement. He expressed concern for the burden on staff, but reminded that initially there probably will not be many cases.
- Article 15 – The state definition of ADU was revised to add ‘on the same lot’. The definition of AADU is by common wall, not by breezeway.

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I. APPROVAL OF MINUTES

A. Approval of Minutes from the July 21, 2016 Planning Board Meeting;

Vice Chairman Moreau moved to approve the July 21, 2016 minutes, Mr. Legg seconded. The motion passed by vote 6-0-1, with Mr. Gladhill abstaining.

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II. PUBLIC HEARING – ZONING AMENDMENTS

A. Proposed amendments to the Zoning Ordinance, Articles 2, 3, 4, 5, 6, 8, 10, 11, 12 and 15, relating to variances, nonconforming buildings and structures, accessory dwelling units, building coverage and yards, residential bulk control and building heights, Historic District exemptions and design guidelines, wetlands protection, off-street parking setbacks, digital signs, and definitions. The proposed amendments are available for review in the Planning Department during normal City Hall business hours, and are also posted on the Planning Department website, planportsmouth.com.

The Chair read the notice into the record.

Mr. Taintor explained that the only revised sections since last meeting are the series of amendments to Articles 4, 8, 15 dealing with ADUs. He highlighted the significant changes.

Chairman Ricci opened the floor for public hearing.

Tracy Kozak, 28 Walden Street

Ms. Kozak urged the Board to consider how allowing DADUs would affect the character of neighborhoods. Owners that have existing detached carriage houses would potentially try to connect those structures to the principle dwelling, which will significantly change the character of the neighborhood. Currently, the ordinance does not require Historic District Commission review, which is a concern in that type of circumstance.

Peter Locke, Thaxter Road

Mr. Locke felt that the current legislation is far better than what was passed two years ago. He mentioned that the Board of Adjustment continuously wrestles with second dwellings on a lot. He stated cautionary considerations in handling parking spaces, DADUs, and microunit requirements.

Mr. Legg moved to keep the public hearing open and **postpone** to the September 15, 2016 Planning Board Meeting, seconded by Vice Chairman Moreau. The motion **passed** by a unanimous vote 7-0-0.

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III. PUBLIC HEARINGS – OLD BUSINESS

*The Board’s action in these matters has been deemed to be quasi-judicial in nature.
If any person believes that 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 **599 Lafayette, LLC, Owner**, for property located at **599 Lafayette Road**, requesting Site Plan Approval for the construction of a 772 s.f. 1-story drive-thru Aroma Joe’s coffee shop, revision of the existing parking and circulation layout, and relocation of dumpsters, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 229 as Lot 8 and lies within the Gateway (GW) District. (This application was continued from the July 21, 2016 Planning Board Meeting.)

The Chair read the notice into the record.

Mr. Legg moved to **postpone** to the September 15, 2016 Planning Board Meeting, seconded by Mr. Gladhill. The motion **passed** by a unanimous voice vote 7-0-0.

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IV. PUBLIC HEARINGS – NEW BUSINESS

*The Board’s action in these matters has been deemed to be quasi-judicial in nature.
If any person believes that 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 **Robert J. and Susan L. Nalewajk, Owners**, for property located at **350 Little Harbour Road (previously 50 Martine Cottage Road)**, requesting a Conditional Use Permit under Section 10.1017 of the Zoning Ordinance for work within an inland wetland and inland wetland buffer for the demolition of a residential structure, detached garage and barn, and the construction of a proposed 4,600 ± s.f. (footprint) residential structure with 3,682 ±s.f. of deck and porches, a 416 ± s.f. portico, a 1,117 ± s.f. detached 2-bay garage, and a new septic system and stormwater structures, with 28 ± s.f. of impact to the inland wetland and 19,927 ± s.f. of impact to the wetland buffer (7,800 ± temporary disturbance and 12,127 ± permanent disturbance). Said property is shown on Assessor Map 202 as Lot 16 and lies within the Rural (R) District.

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION

Bernie Pelech

Mr. Pelech’s presentation included the following statements:

- The applicant has made conscious efforts to mitigate environmental impacts by revegetating some areas, installing pervious pavement, and considering geothermal wells and solar panels.
- The level of excavation was thoroughly communicated at the Conservation Commission meetings and the site walk. The plan was approved by the Conservation Commission with two stipulations: to not utilize the northern driveway, and to remove pile of brick and rubble.
- Two existing structures within 60 feet of wetlands will be removed. The existing garage will still be located within wetland buffer.
- The portion of land where the docks were built at Sagamore Creek for Cornell University and UNH will be revegetated. The net environmental impact is positive.

John Chagan, Ambit Engineering

Mr. Chagan's presentation included the following statements:

- The proposed plan includes the removal of the existing structure and replacement of a new structure. The property is bordered by tidal buffer and wetland buffer. The ribbon driveway would consist of permeable pavers with grass in between. Mr. Chagan explained the specific location of all the driveways.
- Various storm water management techniques were described with the use of infiltrated drip edges, membrane roofing, and rain gardens were described.
- A large oak tree is located at the north end near the proposed access way. The planned measures to maintain proper air flow to the tree roots were explained.

Steve Riker, Ambit Engineering

Mr. Riker's presentation included the following statements:

- The proposed plan would inflict 28 s.f. of temporary impact in order to bury the utility service underground. There is no work proposed in the tidal wetland buffer.
- Each criterion for the conditional use permit was reviewed.
- The removal of the barn and detached garage totals a net loss of 844 s.f. impervious surface.

Chairman Ricci stated his concern to criteria number five in the conditional use permit stating the proposal is the alternative with the least adverse impact. Mr. Riker felt that the pervious driveway and improved storm water management are examples of improvements.

Mr. Gladhill stated his concern to criteria number two in the conditional use permit stating there is no alternative location outside of the wetland buffer that is feasible. He thought there were alternative locations for the garage and questioned why the design was not fully contained outside the wetland buffer. Mr. Riker explained that the Nalewajks would prefer a design that presents the front of the house first, not the garage. Mr. Chagan explained why the design was proposed in the manner. He mentioned an example of another alternative that would require more excavation than what was proposed. Mr. Gladhill questioned the layout of the parking spaces.

Mr. Gamester asked how the leech field and septic would be affected if the structure was moved to the east. Mr. Chagan noted that the septic is in the most efficient location. Mr. Nalewajk explained the impacts of moving the garage to a location other than the proposed.

Mr. Pelech mentioned that the parking spaces were relocated so that 75% of the spaces were outside the buffer. Originally, they were configured in a different location. He referenced the plan set that demonstrates the trees that Mr. Nalewajk referenced.

Robbie Woodburn, Landscape Architect

Ms. Woodburn explained it is a larger home and the idea of the L-shape building was surgically proposed to stay between the wetland buffers and trees. The existing access ways are hoped to be leveraged.

Mr. Moore questioned the Conservation Commission deliberations regarding the retaining wall. Mr. Britz explained that the concerns raised questioned the necessity for the second access way going north. He felt that the Conservation Commission reached consensus on the sensitivity of the environmental concerns and that few members had differing concerns for the size or retaining wall.

Vice Chairman Moreau asked whether the Conservation Commission looked at having the garage in the location of the proposed parking spaces. Mr. Britz did not recall.

Mr. Pelech reminded that the trees on the property are extremely old and date back to when the Sheafe Farm existed and extended out to Odiorne Point. He explained that the retaining wall is necessary to preserve the old oak tree.

Ms. Woodburn mentioned that the 40-inch wide tree is on a hill with a steep slope down to the existing track of the driveway. The plan intends to remove the organic material and fill with crushed stone. The stone would help to air the roots of the trees while raising the grade.

Mr. Riker explained the angles from which each photograph presented was taken.

Chairman Ricci asked if the existing footprint would have less adverse impact. Mr. Chagan presumed it would and emphasized that the measures taken in the proposed plan combined should outweigh impact of a larger structure. Mr. Taintor provided the existing footprint dimensions.

Mr. Gladhill referenced a letter received by the Historic District Commission indicating that the house is eligible to be registered in the national register. Mr. Pelech replied that the proposed plan is allowable per the demolition permit.

Chairman Ricci stated that he would not deny any size house outside the buffer zone.

Chairman Ricci asked if anyone else was present from the public wishing to speak to, for, or against the application.

Tracy Kozak, 28 Walden Street

Ms. Kozak regretted that she missed the Conservation Commission meetings and was recently made aware of the threat to the property. She suggested that the property be known as 50 Martine Cottage Road. She addressed the five criteria in the conditional use permit individually and stated her concerns for environmental and wildlife impacts.

Jonathan Wyckoff, 135 Sparhawk Street

Mr. Wyckoff complemented the environmental considerations in the proposed plan, but echoed Ms. Kozak's comments that the cottage is not just an old run down cottage. The advertising and demolition permit do not do it justice and the address was not clear. He thought that any demolition should be put on hold until the ordinance is reviewed. If it is demolished, it will be the beginning of a very big movement.

Mr. Pelech thought to reference an ordinance that has not yet been proposed would subject the Nalewajk to unfair treatment and unequal treatment. He reminded that this is a conditional use permit. He saw the Conservation Commission recommendation as a strong indicator and thought the historic preservation is not in the purview of the Board.

DISCUSSION AND DECISION OF THE BOARD

Mr. Gladhill asked when the address stage occurred. Mr. Taintor thought it may have happened when the subdivision occurred.

Vice Chairman Moreau clarified that the reduction of wetland buffer was 484.

Vice Chairman Moreau saw the improvements of the property, but felt that a smaller size home would have less impact and allow for the garage.

Mr. Gladhill stated his opposition for the conditional use permit because of criteria numbers two and five. He expressed his concerns for the demolition of the structure and the size of the new proposed home.

Ms. Colbert-Puff emphasized that the applicant proposed a number of measures to reduce the environmental impact and supported the majority vote of the Conservation Commission.

Mr. Legg moved to **grant** Conditional Use Permit with the following stipulations:

1. The stone and brick rubble pile shall be removed.
2. The construction access to the site shall be entirely on the southerly access way.

Seconded by Mr. Gamester.

Mr. Legg agreed with Vice Chairman Moreau that it is a difficult decision. He hesitated preventing the applicant from moving forward given that the Conservation Commission recommended favorably.

Mr. Gamester reminded that a buffer is not intended to be entirely avoided in all circumstances. He felt that the applicant has taken the necessary measures to mitigate further impact and stated his support for the application.

Mr. Gladhill felt that alternative locations for the structures still exist.

Chairman Ricci was troubled by the size of the house and did not see that it was the least adverse impact option. He applauded all the efforts, but did not feel comfortable with the size of the lot.

Vice Chairman Moreau suggested that a stipulation include for maintenance of the rain gardens.

The motion **passed** by a voice vote 5-2-0, with Mr. Gladhill and Chairman Ricci opposed.

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V. CITY COUNCIL REFERRALS/REQUESTS

*The Board's action in these matters has been deemed to be legislative in nature.
If any person believes that 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. Proposed acceptance of a permanent easement from the Portsmouth Housing Authority for construction of a sidewalk and multi-use path on Gosling Road.

Mr. Taintor explained the background of the project and demonstrated the easement, pedestrian and bicycle access, and future plans.

Mr. Moore moved to **recommend** that the City Council approve the acquisition of the easement as proposed, seconded by Mr. Gamester.

Mr. Moore explained that the project planned is contained within the Portsmouth side of the road borders. There are conversations to extend the scope of the project, but the financial ramifications have yet to be solidified.

The motion **passed** by a unanimous voice vote 7-0-0.

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B. Proposed acquisition of approximately 50 acres of land from the Foundation for Seacoast Health for expanding the Recycling Center, creating a multi-field recreation complex, and ensuring protection of valuable wetland and open space.

Chairman Ricci passed the gavel to Vice Chairman Moreau and recused himself from voting.

Mr. Taintor explained the primary purpose of the project is to add four recreational fields, expand the recycling center, and protect valuable wetland and existing trails. The City is looking to acquire land in three general areas; the northeast section for extending recycling facility and access from Peverly Hill Road, the middle section for recreational fields, and the southern end for preserving wetlands and creating passive recreation. The access way for the recreational fields would be located at the end of Campus Drive.

Vice Chairman Moreau asked if there will be access from Banfield Road. Mr. Taintor mentioned that it is outside the land to be acquired by the City and there is currently no proposal for that area. He added that the City has been looking for ways to access this area through a future rail trail.

Mr. Legg moved to **recommend** that the City approve the acquisition of the land from the Foundation for Seacoast Health as proposed, seconded by Mr. Gladhill. The motion **passed** by a unanimous voice vote 6-0-0.

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VI. OTHER BUSINESS

A. Request from Kim Rogers, GL Rogers and Company, for property located at 165 Deer Street and 181 Hanover Street, requesting a second six-month extension of Subdivision Approval which was granted by the Planning Board on August 20, 2015, and which was granted a first six-month extension by the Planning Director on February 25, 2016.

B. Request from Kim Rogers, GL Rogers and Company, for property located at 165 Deer Street and the corner of the Right-of-Way at Bridge Street and Deer Street, requesting a second six-month extension of Subdivision Approval which was granted by the Planning Board on August 20, 2015, and which was granted a first six-month extension by the Planning Director on February 25, 2016.

Vice Chairman Moreau moved to combine Items VI.A. and VI.B. into one voting, seconded by Mr. Legg. The motion passed by a unanimous voice vote 7-0-0.

Chairman Ricci read the notices into the record.

Vice Chairman Moreau moved to **grant** a second six-month extension of Subdivision Approval for property located at 165 Deer Street and 181 Hanover Street and to **grant** a second six-month extension of Subdivision Approval for property located at 165 Deer Street and the corner of the right-of-way at Bridge Street and Deer Street, to expire on February 20, 2017, to expire on February 20, 2017, seconded by Mr. Legg. The motion **passed** by a unanimous voice vote 7-0-0.

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C. Consideration of amendments to the Subdivision Rules and Regulations and the Site Plan Review Regulations to require preapplication review for certain major developments and to require that all mylars be pre-approved by the Registry of Deeds before being delivered to the Planning Department for recording.

Mr. Moore moved to **postpone** to the September 15, 2016 Planning Board meeting, seconded by Vice Chairman Moreau. The motion **passed** by unanimous voice vote 7-0-0.

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VII. ADJOURNMENT - A motion to adjourn at 9:15 pm was made, seconded and passed unanimously.
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Respectfully Submitted,

Marissa Day
Acting Secretary for the Planning Board

These minutes were approved at the September 15, 2016 Planning Board Meeting.