

MINUTES

**PLANNING BOARD
PORTSMOUTH, NEW HAMPSHIRE**

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

6:30 PM

NOVEMBER 16, 2017

MEMBERS PRESENT: Dexter Legg, Chairman; Elizabeth Moreau, Vice Chairman; Nancy Colbert-Puff, Deputy City Manager; David Moore, Assistant City Manager; Colby Gamester; Jay Leduc; Jody Record; Jeffrey Kisiel; Corey Clark, Alternate; and Jane Begala, Alternate

ALSO PRESENT: Juliet T. H. Walker, Planning Director

MEMBERS ABSENT: City Council Representative Rebecca Perkins

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6:30 PM – CAPITAL IMPROVEMENT PLAN – PUBLIC INFORMATION MEETING

Ms. Walker presented a brief overview of the Capital Improvement Plan (CIP) process.

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I. APPROVAL OF MINUTES

1. Approval of Minutes from the October 19, 2017 Planning Board Meeting;

*It was moved, seconded, and unanimously passed to **approve** the October 19, 2017 minutes.*

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II. DETERMINATIONS OF COMPLETENESS

Site Review:

A. The application of **Pamela Thatcher, Owner**, and **Charlie Seefried, Applicant**, for property located at **180 Middle Street**, requesting Site Plan Approval

*Ms. Moreau moved that the Board determine that the application is complete according to the Review Regulations and to accept the application for consideration, seconded by Mr. Moore. The motion **passed** unanimously.*

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III. PUBLIC HEARINGS – OLD BUSINESS

A. The application of **Goodman Family Real Estate Trust, Owner, and Aroma Joe’s Coffee, Applicant**, for property located at **1850 Woodbury Avenue**, requesting Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within the inland wetland buffer to construct a 785 ± s.f. restaurant/take-out building and 195 ± s.f. attached patio, with drive thru service and a walk –up window, with 6,870 ± s.f. of impact to the wetland buffer. Said property is shown on Assessor Map 239 as Lot 9 and lies within the General Business (BD) District. (This application was postponed at the October 19, 2017 Planning Board Meeting).

Chairman Legg read the notice into the record.

It was moved, seconded, and unanimously approved to postpone the application to the December 21, 2017 Planning Board meeting.

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B. The application of **James A. Mulvey Revocable Living Trust, Robert J. Bossie Revocable Trust and Peter Brown Living Trust, Owners**, for property located at **150 Spaulding Turnpike**, requesting Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within the inland wetland buffer to remove two buildings, remove pavement and replace with pervious and impervious pavement, for a truck sales outlet with vehicle storage, with 2,570 ± s.f. of permanent impact to the wetland buffer. Said properties are shown on Assessor Map 236 as Lots 34, 35 & 36 and lie within the General Business (GB) District. (This application was postponed at the October 19, 2017 Planning Board Meeting).

Chairman Legg read the notice into the record.

It was moved, seconded, and unanimously approved to postpone the application to the December 21, 2017 Planning Board meeting.

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C. The application of **Borthwick Forest, LLC, and KS Borthwick, LLC, Owners, and Borthwick Forest, LLC, Applicant**, for property located **on proposed subdivision road to be created off Borthwick Avenue**, requesting Amended Site Plan Approval to increase the height of the proposed office building (footprint of 16,700 ± s.f.) from 3 stories to 4 stories (gross floor area of 66,800 ± s.f.), with related paving, lighting, utilities, landscaping, drainage, multi-use path and associated site improvements. (Original Site Review approval was granted by the Planning Board on May 18, 2017). Said properties are shown on Assessor Map 241 as Lots 25 & 26 and Assessor Map 233 as Lots 112, 113, & 114 and lie within the Office Research (OR) and the Single Residence B (SRB) Districts. (This application was postponed at the October 19, 2017 Planning Board Meeting).

Chairman Legg read the notice into the record.

It was moved, seconded, and unanimously approved to postpone the application to the December 21, 2017 Planning Board meeting.

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D. The application of **Deer Street Associates, Owner**, for property located at **181 Hill Street**, (“Lot 6”), requesting Site Plan Approval for the construction of a 4-story mixed use building with a penthouse (including interior parking garages on two levels, retail space on the ground floor, office space on the first floor and 43 residential units on the second, third, fourth and penthouse floors) with a footprint of 12,574 ± s.f. and gross floor area of 81,498 ± s.f., with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 138 as Lot 62 and lies within the CD5 District. (This application was postponed at the October 19, 2017 Planning Board Meeting).

Chairman Legg read the notice into the record.

Mr. Kisiel recused himself from the application.

SPEAKING TO THE APPLICATION

Present were Mike Penney of GeoInsight, the owner Kim Rogers, and project architect Tracy Kozak. Mr. Penney stated that the changes to the plans included removing the stop sign and the outlet per the Board’s requests, and adding a painted stop sign inside the garage. He said a note was added to the plans indicating that the paving bricks used in the parking area on Hill Street would be a different color than the bricks in the sidewalk. He said they removed the foundation drain on the retaining wall and planned to install leach holes at a higher elevation in the wall, which would eliminate the concern about the pipe discharging out onto Congress Street.

Mr. Penney reviewed the packet for the Board. He said the Technical Advisory Committee (TAC) recommended a peer review if DSA did a sump pump at the lowest garage level, but the sump was removed and replaced with a water proofing system. He said the stormwater design was acceptable to TAC and that he didn’t feel that a peer review would be necessary. He noted that there was discussion at the previous meeting regarding site stormwater management in terms of the overall volume of the discharge being reduced. He said they put a list together of items they considered and why they thought that additional infiltration wasn’t reasonable for the project. He reviewed some of the issues, including the geologic conditions and how they were doing a small amount of infiltration at the site and didn’t have enough volume to call out. He discussed the contamination issue, noting that the urban fill at the site was slightly contaminated and that the infiltration from the project’s property would only cause more contamination. He said it would be a lot cleaner going into North Mill Pond than if they infiltrated it and had it pass through contaminated soil. He said the DES and AOT requirements related to infiltrated water, which wasn’t a preferred thing to do. He said there were regulations in place that would prohibit infiltration of water where it would result in exceeding ground quality studies. Given all those factors, Mr. Penney said they thought the amount of infiltration they would have to do would be very small and would cause more harm than good, so they were asking that the Board not require DSA to try to infiltrate more of the stormwater.

Mr. Penney discussed the Alteration of Terrain Permit, saying that they met with DES regarding Lot 6 and all the proposed development on Deer Street. He said they discussed site conditions, contaminated groundwater, geology, and the designs for the lots. He said DES stated that an AOT would not be necessary for Lot 6 or the other DSA properties. He said it wasn’t clearly demonstrated that following the AOT regulations would result in great benefit to the environment or the City.

Ms. Begala asked Mr. Penney to explain the worst-case high tide and sea level issues. Mr. Penney said they talked about putting a valve on their stormwater treatment system and also discussed the elevation of the outlet regarding a storm event flood. He said if the flood water affected the retention basin, it wouldn't back up inside their stormwater system, but all the streets would be underwater.

Ms. Moreau said she spoke with the engineers about the peer review and that they said the design modification was okay but still thought a geologic study would have to be done. Mr. Penney said they planned to do additional groundwater and geotechnical evaluation in the coming months for construction purposes, and if something came up, they would get everyone involved again.

Mr. Leduc asked whether the project's design would take into consideration all six buildings at once or individually. Mr. Penney said Lot 6 was being developed individually but that they were also working on the other designs at the same time. Mr. Leduc asked Ms. Walker whether the Board was supposed to look at the buildings individually or more as a concept. Ms. Walker said that Lot 6 was its own project but that the Board would look at the other lots because there were a lot of cross-coordination issues. She said they would also look at the stormwater management and utilities collectively.

Mr. Clark asked whether the new drainage system took into account the calculations from Site 6 and the other sites. Dave Allen, Foundry Place Garage Project Manager, replied that Lots 3, 4, and 5 were 100 percent impervious anyway, so the same runoff would result. He said when they did the design for the garage, they tried to segregate as much of Foundry Place as possible and send it down to Brewster Street, which resulted in about 80 percent of the garage and three-quarters of Foundry Place draining to Brewster Street. He said Brewster Street had a separate stormwater treatment system and that the garage had a stormwater treatment system for both roof drains and the floor drains. He said they looked at it holistically and anticipated that there would be development on both sides of the road. He said the drainage system was designed to pick up everything being built on that corridor.

Mr. Clark asked about the vintage, and Mr. Allen said it was late 1960s vintage and probably part of the urban renewal project. Mr. Clark asked whether it was still adequate for the site. City Engineer Terry Desmarais replied that there was a lot going on in that area and that they would look at the capacity analysis of the entire catch basin area. He noted that several of the facilities were within tidal regions, so they had perimeter drains and pumping systems and would do a more holistic evaluation of the outfall in the near future.

Ms. Begala asked whether there was a 3D model of the project and what parts of the project fell into the Historic District. Mr. Penney reviewed a diagram, noting that Lots 4 and 5 were in the Historic District.

PUBLIC HEARING

Rick Becksted of 1395 Islington Street asked whether the project would be divided or not. He said Lot 6 did not have the required parking and relied on the rest of the buildings surrounding it. He said Lot 4 had a 4-story building and asked how an incentive plan allowed someone to go 10 feet above the zoning requirement. He compared the project to the 51 Islington Street one which he said had appalled everyone. He asked the Board not to grant the request until they could consider the height further.

Chairman Legg asked if anyone else was present from the public wishing to speak to, for, or against the application. Seeing no one else rise; the Chair closed the public hearing.

DISCUSSION AND DECISION OF THE BOARD

Ms. Moreau asked about the community incentive, noting that it was decided almost outside the Board’s control. Ms. Walker said the applicant went through extensive zoning review with the Planning Department and that the community space on Lot 2 was tied to the other properties. Deputy City Manager Colbert-Puff explained that, if the Board issued a site plan approval and the plan was discovered to have a zoning violation, site plan approval didn’t necessarily approve a zoning violation.

Ms. Begala noted that there were 15 additional parking spaces provided at the municipal garage that weren’t on site. Ms. Kozak stated that 53 spaces included 14 deeded spaces for the neighbor across the street, and 15 spaces were included as part of the Purchase and Sales Agreement conditions with Deer Street Associates, for a total of 65 spaces. She noted that there was an excess of 12 spaces and that they only needed 53. It was further discussed. Chairman Legg said that when the rest of the lots came before the Board, they would be considered collectively, even if they came individually, and the Board would have additional information to make a more informed decision.

Mr. Moore moved to grant Site Plan Approval, with the following stipulations:

Conditions Precedent (to be completed prior to the issuance of a building permit):

1. Any geohydrologic studies undertaken by the applicant to evaluate groundwater flow, shall require third party peer review, to be coordinated with DPW. Based on the results of the peer review, any permanent foundation dewatering system discharges to City’s drainage system may require a storm drain permit and a capacity use surcharge.
2. The construction groundwater dewatering discharge shall require a temporary dewatering discharge permit. DPW shall determine if the groundwater needs to be sampled/tested for both the temporary and permanent connection to the City’s drainage system to determine if any treatment is required prior to discharge
3. The site plan and any easement plans and deeds shall be recorded at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.
4. The applicant shall prepare a Construction Management and Mitigation Plan (CMMP) for review and approval by the City’s Legal and Planning Departments.

Ms. Moreau seconded the motion.

Mr. Moore stated that the Board’s comments had been helpful and that the plan met the site review criteria. He said the comments, thoroughness and interest in the project were indicative of the project’s importance. Ms. Moreau said the Board spent a lot of time on the zoning for that area and that the project took advantage of that and gave the Board what they asked for

The motion passed unanimously.

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IV. PUBLIC HEARINGS – NEW BUSINESS

A. The application of **Gregory C. and Sandra M. Desisto, Owners**, for property located at **36 Shaw Road**, requesting Amended Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within the inland and tidal wetland buffers to eliminate gutters and one catch basin, relocate a manhole and eliminate the pervious paver parking area, with a 396 ± s.f. reduction of permanent impact and 35 ± s.f. of temporary impact to the wetland buffer. Said property is shown on Assessor Map 223 as Lot 22 and lies within the Single Residence B (SRB) District. (Conditional Use Permit approval was granted on September 17, 2015 and Amended Conditional Use Permit approval was granted on January 19, 2017 by the Planning Board. **Chairman Legg read the notice into the record.**

It was moved, seconded, and unanimously approved to postpone the application to the December 21, 2017 Planning Board meeting.

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B. The application of **Carolyn McCombe, Trustee; Elizabeth Barker Berdge, Trustee; and Tim Barker, Owners**, for property located on **Martine Cottage Road**, requesting Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within the inland wetland buffer to construct a 1,936 ± s.f. single family home and a 1,200 ± s.f. detached barn, with a 22' x 52' paved parking area and a 25' x 5' rain garden, with 23,125 ± s.f. of impact to the wetland buffer. Said property is shown on Assessor Map 202 as Lot 149 and lies within the Rural (R) District.

Chairman Legg read the notice into the record.

It was moved, seconded, and unanimously approved to postpone the application to the December 21, 2017 Planning Board meeting.

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C. The application of **Pamela Thatcher, Owner, and Charlie Seefried, Applicant**, for property located at **180 Middle Street**, requesting Site Plan Approval for a proposed 3-story four unit residential building with a footprint of 2,606 ± s.f. and gross floor area of 9,348 ± s.f., and a proposed 2-story one unit residential carriage house with a footprint of 959 ± s.f. and gross floor area of 1,918 ± s.f., with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 127 as Lot 8 and lies within the Mixed Residential Office (MRO) District and the Historic District.

Chairman Legg read the notice into the record.

SPEAKING TO THE APPLICATION

Project Consultant Peter Weeks spoke to the application on behalf of the owner. He introduced the project engineer, Alex Ross, of Ross Engineering. Mr. Weeks reviewed the site's history. He noted that the project received approvals from TAC and the Historic District Commission (HDC), which included a few stipulations. He said the house needed some work and that the owner would replace the roof, restore the original windows, repoint the outside brick, and reduce the first six feet of fence to three feet for better visibility. Mr. Ross then reviewed the existing conditions and site plans, parking,

drainage and utility plans, sprinkler system, landscape plan, details, and minor clarifications from TAC.

Mr. Gamester asked what size the crushed stone was on the existing driveway and what would be proposed. Mr. Ross said the existing driveway was a mixture of stone with large and small areas of grass and weeds and that the new driveway would be a typical NHDOT sub-base mix. Mr. Gamester asked whether the cobblestones could be extended so that the rocks wouldn't go into the sidewalk. Mr. Ross said they could make the swatch wider. Ms. Moreau asked why there was an 8-ft privacy screen in front of the carriage house. Mr. Ross said it was to protect it from headlights. Ms. Moreau asked whether the screen could be shorter, and Mr. Ross said it could. Ms. Begala asked whether there was a net increase in greenery in the site plan. Mr. Ross said there would be a decrease when the parking was put in. Mr. Clark asked about the trench detail for a storm drain, noting that it wasn't on the plan. Mr. Ross said that the detail was just a boiler plate and that there was no proposed storm drain for that site.

PUBLIC HEARING

Chairman Legg asked if anyone was present from the public wishing to speak to, for, or against the application. Seeing no one else rise; the Chair closed the public hearing.

DISCUSSION AND DECISION OF THE BOARD

Ms. Moreau moved to grant Site Plan Approval with the following stipulations:

Conditions Precedent (to be completed prior to the issuance of a building permit):

1. *The site plan shall be recorded at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.*
2. *The plan sheet(s) submitted for recording shall include the following notes:*
 1. *This Site Plan shall be recorded in the Rockingham County Registry of Deeds.*
 2. *All improvements shown on this Site Plan shall be constructed and maintained in accordance with the Plan by the property owner and all future property owners. No changes shall be made to this Site Plan without the express approval of the Portsmouth Planning Director."*
3. *That the cobblestone driveway apron shall be extended from 6' to 12'.*
4. *The green screen privacy structure in front of the carriage house shall be lowered from 8' to 6'.*

Mr. Gamester seconded the motion. The motion passed unanimously..

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D. Request of the **Sheila L. Raeburn Living Revocable Trust, Owner, Sheila Lynn Raeburn, Trustee**, for the restoration of involuntarily merged lots for property located at **737 Woodbury Avenue**.

Chairman Legg read the notice into the record.

SPEAKING TO THE REQUEST

The applicant Sheila Raeburn was present to speak to the application. She reviewed her petition and explained the reason for her request, noting that she wanted to sell one property and keep the other lot out of the hands of developers.

PUBLIC HEARING

David Perkins of 759 Woodbury Avenue asked whether there was a minimum frontage for a piece of property if the lot was sold and someone wanted to build on it. Ms. Walker said that when lots were involuntarily merged and then unmerged per City Council action, non-conforming lots were created, and anyone who wanted to build on them would require variances.

Chairman Legg asked if anyone else was present from the public wishing to speak to, for, or against the application. Seeing no one else rise; the Chair closed the public hearing.

DISCUSSION AND DECISION OF THE BOARD

Ms. Moreau moved to recommend to the City Council that the parcel at 737 Woodbury Ave should be restored to its premerger status as two lots, and municipal zoning and tax maps be updated to identify the premerger status of the lots as described in deeds recorded at the Rockingham County Registry of Deeds and shown on the Standard Property Survey prepared by Easterly Survey dated 10/4/17.

Mr. Gamester seconded the motion. The motion passed unanimously.

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V. CITY COUNCIL REFERRALS/REQUESTS

A. Request of Attorney Kevin Baum, representing owner of 200 Spaulding Turnpike, to Comment to Proposed Gateway Mixed-Use Zoning Amendments and Request to Extend Proposed District to Farm Lane.

Ms. Walker reviewed the background for the request, noting that the letter went to the City Council from Attorney Baum about a portion of the zone being zoned General Business. She said the City Council received the request and referred it back to the Planning Board to consider it in the context of extending the future Gateway mixed-use zoning to other properties. She said the project cut back to include just the current General Business zone, which wasn't initially included in the Housing Committee's recommendations. She said she wanted the Planning Board's feedback and guidance

The Board discussed it. Ms. Moreau said there were two multiple projects proposed for the space that had not gone forward because a lot of it had to do with the neighborhood and property owner rights. She said the Board had to consider what made sense for the whole property and whether they wanted to add more area before they even knew whether the Gateway zoning would work or not. Deputy City Manager Colbert-Puff said she served on the Housing Committee and favored seeing whether the zoning worked or not. She said she preferred to take it under consideration for a longer-term look. Ms. Begala said there would be opportunities for public input and thought that an inclusive process was important. She said the Board should wait until after the ordinance was finalized.

Chairman Legg said he agreed that the Board should wait until the City Council acted on what was submitted and that once the City adopted the new zoning, the Board could ask the Planning Department to consider more broadly how the Board could apply mixed-use zoning in other areas that may not be contiguous. Ms. Begala said the property was only 150 feet deep and could be residential. She thought it required input from neighbors and that there could be a better process. Ms. Moreau noted that the property was hard to develop due to wetlands and easements and suggested keeping that in mind when zoning it. Chairman Legg said that he felt it was appropriate that, once the City took action, the Board resolve whether or not they wanted to do something immediately and that it be formalized. Ms. Walker said she would have an answer at the next meeting as to what the Board had to specifically vote on or refer back to the City Council.

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VI. OTHER BUSINESS

A. Request for acceptance of a drainage and flowage easement for property located at 1275 Woodbury Avenue, from Heritage Hill Condominium Association to the City of Portsmouth.

*Mr. Moore voted to **recommend** to the City Council the acceptance of a drainage and flowage easement from Heritage Hill Condominium Association for property located at 1275 Maplewood Avenue.*

*Mr. Gamester seconded the motion. The motion **passed** unanimously.*

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B. Request for Reconsideration/Rehearing of September 20, 2017 Conditional Use Permit application for a Detached Accessory Dwelling Unit, for property located at **36 Artwill Avenue**.

Ms. Walker said it wasn't typical of the Board to have a request for rehearing in front of them. She explained that usually the request went to Superior Court, but because it dealt with zoning, there was some ambiguity. She said the Board's determination would be just a discussion on the request and whether or not the Board agreed that there was an error in procedure of law.

*Mr. Moore moved to **deny** the request for a re-hearing, and the motion was seconded.*

The Board discussed it. Ms. Moreau said that, due to the way the City currently defined occupancy, it could be considered an error of law because the Board didn't follow the definition of ownership where percentage wasn't brought into place. She said she thought there was a reason to rehear the application. Ms. Record said she didn't think the Board made a mistake. Mr. Gamester said the applicant had a good point regarding the timing of the approval and that there was enough merit for the application to be reheard. Chairman Legg disagreed, saying that the Board followed the ordinance as they interpreted it and came to a sound conclusion.

*The motion **passed** by a vote of 6-3.*

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C. Announcement of CIP Planning Board Advisory Committee.

Dexter Legg, Elizabeth Moreau and Jeffrey Kisiel were appointed to the CIP Advisory Committee.
They will meet on December 6 with City staff.

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II. ADJOURNMENT

It was moved, seconded, and **passed** unanimously to adjourn the meeting at 8:45 p.m.

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Respectfully Submitted,

Joann Breault,
Acting Secretary for the Planning Board

These minutes were approved at the December 21, 2017 Planning Board Meeting.