

**MINUTES**

**PLANNING BOARD  
PORTSMOUTH, NEW HAMPSHIRE**

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

**7:00 PM**

**APRIL 25, 2019**

**MEMBERS PRESENT:** Dexter Legg, Chairman; Elizabeth Moreau, Vice-Chairman; Colby Gamester; John P. Bohenko, City Manager; Ray Pezzullo, Assistant City Engineer; Jody Record, Corey Clark, Alternate, and Polly Henkel, Alternate

**ALSO PRESENT:** Juliet Walker, Planner Director; Jillian Harris, Planner I

**MEMBERS ABSENT:** Jeffrey Kisiel, Jay Leduc, Rebecca Perkins, City Council Representative;

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**I. PUBLIC HEARINGS – NEW BUSINESS**

A. The application of the **City of Portsmouth, Owner, and Lee Carbonneau, Applicant**, for property located at **Banfield Road** requesting a Wetland Conditional Use Permit under Section 10.1017 of the Zoning Ordinance for work within the inland wetland and buffer and prime wetland and prime wetland buffer to replace three culverts, install a guardrail, and construct granite curbing with a multi-use trail/sidewalk from Ocean Road to Heritage Avenue. The work will be within an approximately 3,000 foot section on Banfield Road and will be completed in stages.

Vice Chairman Moreau moved to hear Public Hearings - New Business Item A and City Council Referral – New Business Item A together and vote on them separately, seconded by City Manager Bohenko. The motion passed unanimously.

**SPEAKING TO THE APPLICATION**

City Engineer Terry Desmarais introduced the project. The proposal is to replace drainage culverts on Banfield Road and plan for a future side path on one side of the road.

Rick Friberg from TEC and Lee Carbonneau from Normandeau Associates were also present. Rick Friberg noted that they were there for two reasons. One is for the CUP and the other is to get a referral to City Council for the easements. The Banfield Road project started as a culvert replacement project. Some are undersized. Some act as equalization culverts to allow

floodwater to pass under the road. They are undersized, so the water goes over the road. There is no roadside protection. The storm water takes away fine material and the flooding causes the culverts to sink. The City engaged Altus Engineering to study the corridor. That study reviewed a number of culverts in the area including Ban 2, Ban 4 and Ban 5. Those are the three that will be replaced for this project. The study identified the appropriate size and location for the replacement culverts. The project considered the City Master Plan and the future rail trail coming through the corridor. The intent is to install the culverts at the right length to plan for any future sidewalks. This project went through the master planning process with City Staff to determine that length. The City hosted two public hearings to get feedback from residents. As a result, the general consensus was to provide foundations on one side of the road to minimize wetland and property impacts. It will also keep construction costs to a reasonable amount. The side of the street that made sense was the one that abuts Heritage Ave. and Constitution Ave. Environmental permitting was required for the project. There are wetlands on both sides of the road and the Great Bog is a prime wetland. They have been working with NHDES. They are permitting the entire wetland crossing to do slope work on the shoulder and plan for a future path. The CUP would be to replace the culverts, install roadside protection, and install the slope work shelf, drainage and infrastructure needed. This application was presented to the Conservation Commission on April 10, 2019. They provided a positive recommendation with conditions. The two conditions were to pay special attention to tree placement and provide sloped curbing. The findings for the criteria for a CUP are in the staff memo. This project is also seeking a recommendation from the Planning Board to City Council to finalize the easements from the abutters. The purple line is for a permanent sidewalk easement. The physical location of the sidewalk is on private property. The green area below is for the slope and drainage easements. There are occasional bump outs for drainage. There are also temporary construction easements requested. In total there are 6 sidewalk easements and 4 slope and drainage easements. The project goal is to improve the safety of the road, provide flood equalization, improve pavement quality, improve the drainage system, and enable pedestrian and bike accommodations.

Mr. Clark questioned where the retaining wall was in the plans. Mr. Friberg responded that it was near Ban 5. Mr. Clark questioned if Ban 5 was one of the ponds that got a lot of debris, and questioned if there were any concerns about clogging. Mr. Friberg responded that there is standing water, so there is potential for a clog. The grate is to help prevent leaves and other debris from building up.

Chairman Legg questioned if anyone on the project team had discussed the project with the abutters impacted by the sidewalk. Mr. Friberg responded that DPW has had initial discussions and they are favorable. They need to have the City Council referral to have formal discussions.

## **PUBLIC HEARING**

Frederick Butts of 520 Ocean Road noted that the trail or bike path would be on the Heritage Ave. side of the road. Mr. Butts wanted to confirm that there would just be curbing along his frontage and no sidewalk. No one has approached him in any fashion to talk about the project, so that may mean his property is not part of the easements.

Mr. Friberg pointed out the property and confirmed that was not one of the properties being sought for an easement. The proposal is to just retain it for an edge of pavement.

Bob Threton of 476 Ocean road commented that the traffic on Banfield Rd. has increased significantly over 15 years. Mr. Threton questioned if there were plans to widen the road. The bike and pedestrian path was shown, but Mr. Threton was not sure about the road.

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

Mr. Friberg responded that there was a variable width on Banfield Rd. today and they were proposing 2-foot shoulders with 10-foot travel lanes to create a uniform width. Ms. Walker clarified that the multi-use path would not be on the road. It will be raised.

## **DISCUSSION AND DECISION OF THE BOARD**

Vice Chairman Moreau moved to grant the Conditional Use Permit with the following stipulations:

- 1.1) The applicant shall use sloped curbing where curb is shown on the plan.
- 1.2) The applicant shall give special attention to tree placement.

Mr. Clark commented that the right of way area on sheet 5 might need more clarification needed. Ms. Walker confirmed that would be clarified. The area Mr. Clark referred to was probably from a prior plan that is referencing something that is not for this project.

Vice Chairman Moreau commented that this was a very much needed project and was glad to see it go forward.

The motion passed unanimously.

- B. The application of **Jacob Jeremiah Sullivan and Margaret Goodlander, Owners**, and **Mark West, Applicant**, for property located at **86 New Castle Avenue** requesting a Wetland Conditional Use Permit under Section 10.1017 of the Zoning Ordinance for work within the wetland buffer to build an addition with a footprint and gross floor area of 405 s.f. with 2,764 +/- s.f. of wetland buffer disturbance. Said property is shown as Assessor Map 207 as Lot 70 and lies within the Single Residence B (SRB) District.

## **SPEAKING TO THE APPLICATION**

Mark West from West Environmental Rob Carty from TMS Architects, and Preston Brown from Millennium Engineering spoke to the application. Mr. West flagged the wetland boundaries and helped prepare the plan. The proposal is for a small addition over an existing deck. It also includes a pervious patio and replanting some gardens. There is a wet meadow wetland with a big berm and then a tidal wetland on the property. The fresh water meadow is providing a big buffer for the tidal wetland. The buffer for the wetland cuts through the middle of the house. The property is extensively landscaped with gardens and a small orchard. There is a small artist

studio. The closest the addition will come to the wetland is 63 feet and the closes the patio will come is 59 feet. The owners are planning on replanting the entire temporary disturbance area. A list of native plants and shrubs was included in the packet. The Conservation Commission asked for details on the pervious pavers, and those were included in the packet as well. The basic function of the wetland includes some shoreline stabilization of a ditched stream that flows through the wet meadow. It goes through a culvert into the tidal wetland. The applicants provided the full amount of information and Mr. Britz indicated that they were pleased with project. The Conservation Commission voted in favor.

Vice Chairman Moreau questioned why it would be best to remove the culverts. Mr. West responded that he suggested removing the small ones in the meadow because they are partially sticking out of the ground. The stream is narrow enough to step over. An eroding culvert does not make sense to leave in the ground. They will put boards down for a bridge. Vice Chairman Moreau questioned how a bridge would be better. Mr. West responded that there would not be any clogging issues.

Mr. Clark questioned if all 4 would be removed. Mr. West responded that there is a large concrete culvert that is older and wider. That will be left in place because it would have to be excavated. All of the other culverts would be removed. They can be done by hand with a shovel. After those areas would be seeded and mulched.

Mr. Carty noted that they located the addition to get as little impact as possible. It would be built over the existing deck with frost walls and a slab on grade or with a crawl space. It will bump out a little to the east with a vestibule for the house. It does not go toward the wetland; it is just parallel.

## **PUBLIC HEARING**

Kathleen Thompson at 56 Bridge's Court noted that her back property abuts the property. Ms. Thompson questioned what size the little bridges would be.

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

Mr. West responded that he had suggested all this and Mr. Britz agreed it made sense. The bridge would have to be around 4 by 4 to get across the 1 foot stream channel. Ms. Walker clarified that the bridges were not part of this request.

## **DISCUSSION AND DECISION OF THE BOARD**

Vice Chairman Moreau moved to grant this proposal as submitted, seconded by Mr. Gamester.

Vice Chairman Moreau commented this was an addition in the buffer, but there was already a deck there. This will make further improvements to create a better property going forward. Chairman Legg agreed and thought the buffer would be improved as a result.

The motion passed unanimously.

- C. The application of **Frank Veneroso, Owner and Applicant**, for property located at **53 Austin Street** requesting a Conditional Use Permit in accordance with Section 10.1112.14 of the Zoning Ordinance to provide twelve on-site parking spaces where a minimum of seventeen are required to operate an Inn. Said property is shown as Assessor Map 127 as Lot 26 and lies with the General Residence C (GRC) District.

### **SPEAKING TO THE APPLICATION**

Roslyn Weems lives with property owner Frank Veneroso and spoke to the application. The application is for a CUP to provide 12 onsite parking spaces where a minimum of 17 is required. Ms. Weems provided a site map. They received a variance on April 16, 2019 to operate as an inn. There will be 8 guest rooms and staff. The ordinance requires 17 spaces for 8 rooms. The application is requesting 12 instead. There are currently rental units in the carriage house. There is a CUP that dates back to 1982 for 8 parking spaces. This application is requesting an additional 4. The parking spaces are set back from the neighbors by 38 feet on one side, 45 feet on the other side, and 28 feet from the street. Austin Street fills up sometimes because it is downtown. It is mostly full on holidays and on Sundays during Mass. There are several walkable parking lot options such as: the Parrot Ave. Lot, the Masonic Temple Lot, the Foundry Place Garage and the Hanover Garage. The location is situated between Middle St. and Islington St. There are bus stops on both of those streets. Based on the use there would be 9 spaces in the driveway and 3 in the garage. Ms. Weems was confident they had more than enough space for the 12 spots. The current parking is paved. They will put brick overlay down and mark spaces. A direct abutter came to the Board of Adjustment Meeting and expressed concern about seeing a lot of cars in front of the home. In response, a landscape screening will be planted.

Vice Chairman Moreau noted that Ms. Weems mentioned a previous CUP was granted for 8 spots and questioned how many were required then. Ms. Weems was not sure. There were and still are 3 apartments in the carriage house. Vice Chairman Moreau commented that she went to the property the day before and could not imagine that amount of parking around the giant tree. Vice Chairman Moreau did not see how spots 5, 6, 7 and 8 would fit in and requested that Ms. Weems walk through the measurements. Ms. Weems responded that they have been parking more cars there for 17 years. In consideration of the measurements there will be more than enough room to come in and back out. Vice Chairman Moreau commented that she could not see the bricks. Ms. Weems responded that they can only be seen when on the property.

Mr. Clark questioned if the three spots in the garage would be dedicated for the three rental units. Ms. Weems responded that those would be for two of their cars. It would not be reserved for the rentals.

Ms. Walker requested clarification on how many rooms the inn would have. Ms. Weems responded that there would be 8 rooms. Ms. Walker questioned if that would be in addition to the three rental units. Ms. Weems responded that the rental units would be part of the inn. There will be 8 total rooms for rent that's it. The applicants do not want to change anything because

families could rent the rental units. That count does not include the unit the owners will live in. Chairman Legg clarified that the apartments would become part of the inn. Ms. Weens responded that 2 would. The last one is where the owners would live. Chairman Legg questioned if they were all one-bedroom units. Ms. Weens responded that the owner's unit was a two bedroom. Chairman Legg clarified that there was a total of 10 sleeping units. Ms. Weens responded that the two-bedroom unit was for the owners.

Ms. Walker recommended that the Board move on the request as presented. The Planning Department may find that a CUP is not needed because they meet the requirements. Ms. Walker commented that she would look into it to confirm if a CUP was needed or not. City Manager Bohenko clarified that the inn would have 8 rooms to rent and a two-bedroom residence. Ms. Walker added that they need 12 spaces based on the calculations. However, she needed to confirm they really did not need a CUP. The Planning Board should vote tonight as if they do.

Chairman Legg commented that if the Board was to approve an application for 12 spaces where 17 is required, then the Board would look like it is not following the ordinance. If they only need 12 spaces, then they don't need a CUP. Ms. Walker commented that the Board could table the application until there is a clear answer. Chairman Legg confirmed that he would like to table it to the May meeting. Chairman Legg questioned if that would create a hardship on the owner. Ms. Weens responded that it was fine because they can't get a sprinkler system until November. Mr. Gamester added that they might not need to come back at all.

Mr. Pezzullo commented that the brick on the parking spaces now looked like dirt. Ms. Weens confirmed that they would have brick put down again in those spaces.

## **PUBLIC HEARING**

Donald Saari of 72 Summer St. lives on the corner of Austin St. and Summer St. Mr. Saari commented that there is a parking problem in that neighborhood. It seems to be a very creative spacing for the proposed parking spaces. The neighborhood is very crowded because it was developed before cars were invented. Many properties are now apartments. In many cases as many as 8-10 vehicles per building are parked on the street. The Corpus Christi Parish was before the Board asking to demolish St. Pat's to provide off street parking for their parishioners. There is a fee and permission required to park overnight at the Masonic Temple Lot. Foundry Place is nothing but a bizarre option. The Board should stipulate that they have to provide definite parking facilities for any extra cars. The neighborhood is so close to the downtown most weekdays it is completely filled with commuters. Mr. Saari objected to this parking proposal. Close hearing

## **DISCUSSION AND DECISION OF THE BOARD**

Mr. Gamester moved to postpone this application to the May 16, 2019 Planning Board meeting, seconded by Ms. Record. The motion passed unanimously.

D. The application of the **City of Portsmouth School Department, Owner**, for the property located at **32 Van Buren Avenue (Dondero Elementary School)** requesting to amend a Wetland Conditional Use Permit under Section 10.1017 of the Zoning Ordinance for

playground renovations. The amendment includes addition of a performance area with stage and benches and an accessible recreation access route/boardwalk with 309 +/- s.f. of wetland buffer disturbance. Said property is shown on Assessor Map 250 as Lot 106 and lies within the Municipal (M) District.

## **DISCUSSION AND DECISION OF THE BOARD**

Mr. Gamester moved to postpone this application to the May 16, 2019 Planning Board meeting, seconded by Ms. Record. The motion passed unanimously.

- E. The application of **David & Tracey Foster, Owners** and **Ambit Engineering, Inc., Applicant**, for property located at **200 FW Hartford Drive** requesting a Wetland Conditional Use Permit under Section 10.1017 of the Zoning Ordinance for wetland and buffer restoration work with an impact of 11,800 +/- s.f. Said property is shown on Assessor Map 270 as Lot 33 and lies with the Single Residence B (SRB) District.

## **SPEAKING TO THE APPLICATION**

Steve Riker with Ambit Engineering spoke to the application. Owners Dave and Tracey Foster were also present. The Fosters wanted to perform some landscaping improvements. They consulted the City wetland map, which showed wetland in the rear of the house. The Foster's removed plants brought in fill for the front of the house, which led to a complaint. Mr. Britz made a site visit and had a wetland scientist look to see if there was wetland involved. There was wetland impact. The restoration plan is to restore the area. The Fosters have been very involved. Ms. Foster is a gardener, so she was heavily involved in creating the planting plan. The wetland and buffer restoration sequence is included in the plan. The Conservation Commission gave a positive recommendation and the applicants had no issues with the stipulations. They are in the wetland restoration narrative. The Planning Staff added a stipulation to have a third party engineer. The applicants have no objections to that. The shaded gray area on the plan is the wetland area and the dark line is the edge of disturbance. There is a heavy planting schedule proposed. There is a buffer planting schedule on the plan. The Fosters are putting in more than what was taken out. One of the stipulations is a timeframe. The Fosters would like to start as soon as possible if they receive a positive recommendation tonight.

Vice Chairman Moreau commented that she had received a letter about the trees that were removed and questioned if it was equal in replacement. Mr. Riker responded that the trees were cut and stumped, so it was unclear how many were removed. The aerial photo showed a fair amount. The plan proposes 6 red maples, 6 green ashes, and 6 gray birches to be planted. There will be a total of 18 trees planted. Vice Chairman Moreau questioned what the dimensions of the impacted area were. Mr. Riker responded that it was 11,800 sf.

Mr. Gamester questioned if July 15<sup>th</sup> was achievable. Mr. Riker confirmed that it was.

## **PUBLIC HEARING**

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

### **DISCUSSION AND DECISION OF THE BOARD**

Mr. Gamester moved to **grant** the request, seconded by Vice Chairman Moreau with the following stipulations:

1. The applicant shall remove all fill except for only the amount of loam necessary to restore the wetland to existing grade.
2. Applicant shall pay for the services of a third party engineer to confirm that the level of fill left on the site for planting is not higher in elevation than the elevation of the site before the fill was placed.
3. All work shall be completed by July 15, 2019.
4. At the end of the second growing season, the applicant shall provide a monitoring report prepared by a qualified professional, approved by the Planning Department, and if the success of the new plants is less than 80%, the dead plants shall be replaced and a new monitoring plan shall be provided.

Mr. Pezzullo questioned who would prepare the survival report. Ms. Walker responded that typically the applicant does. The Board can stipulate a professional does it. Vice Chairman Moreau commented that they should clarify who does the determination. Chairman Legg questioned if the third party engineer could do it. Ms. Walker responded that it should just say provided by a qualified professional. Mr. Gamester questioned if that meant a professional would plant them. Ms. Walker responded that would be up to the owners. They would make that decision. Mr. Gamester clarified that just the monitoring report would be done by a qualified professional.

The motion passed unanimously.

- F. The application of **Joseph & Ellen Yarborough, Owners and Applicant**, for property located at **746 Middle Road** requesting a Conditional Use Permit in accordance with Section 10.814 of the Zoning Ordinance for a Detached Accessory Dwelling Unit with a gross floor area of 799 +/- s.f. Said property is shown on Assessor Map 232 as Lot 49 and lies within the Single Residence B (SRB) District.

### **SPEAKING TO THE APPLICATION**

Ellen and Joseph Yarborough spoke to the application. They are proposing some changes to the ADU. They were previously granted the opportunity to build an ADU on the property in May 2017. The Yarboroughs started working on plans for their house as well and realized that it needed a larger change. This application is proposing a different design for the ADU. The new design makes more sense for the remodel the Yarboroughs are doing to their house. The original design was better because it was one floor, but the new one fits in better with the neighborhood. It is more compatible with the remodel of the primary home. The proposal is to build the

remodel and have a 799 square foot ADU. It is 799 square feet because they want to have the staircase inside. An inside staircase would be safer. Mr. Yarborough is a forensic structural engineering and has seen small accidents like slipping on an icy staircase frequently. The indoor staircase would prevent a lot of safety hazards that an outdoor staircase would present especially in the New England climate. The Yarborough's were asking for 49 square feet of relief and a small change to the façade. They are allowed 40% of the combined façade, but were requesting 44.8% to have the rooflines match.

Vice Chairman Moreau clarified that the calculated square feet considered all the living space above the garage and stairwell, but not the laundry or storage areas. Mr. Yarborough confirmed that was correct. Vice Chairman Moreau commented that she could not get 799 square feet. Mr. Yarborough responded that it is different depending on how the stairs are included.

## **PUBLIC HEARING**

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

## **DISCUSSION AND DECISION OF THE BOARD**

Vice Chairman Moreau commented that she felt this Board has been sensitive about the ADU square footage and has tried to not go above 750 square feet. Without the stairwell, the living space is less. Therefore, Vice Chairman Moreau was comfortable in allowing this.

City Manager Bohenko requested that the comment about the safety of having an indoor stairwell be included in the minutes.

Chairman Legg noted that this design was much more attractive and fits in with the neighborhood better.

1. Vice Chairman Moreau moved to grant a modification from the following sections, seconded by Mr. Gamester:

- 1.1 Section 10.814.52 of the Zoning Ordinance – for approval of a DADU of 799+/- s.f. of gross floor area where 750 s.f. is the maximum allowed.
- 1.2 Section 10.814.531 of the Zoning Ordinance – for a façade area of 44.8% where the maximum allowed is 40% of the combined façade area of the DADU and the principle single family dwelling.

The motion passed unanimously.

2. Vice Chairman Moreau moved to find that the application satisfies the remaining requirements of 10.814.50, seconded by Mr. Gamester. The motion passed unanimously.

3. Vice Chairman Moreau moved to grant the conditional use permit with the following stipulations, seconded by Mr. Gamester:

- 3.1 In accordance with Sec. 10.814.90 of the Zoning Ordinance, the owner is required to obtain a certificate of use from the Planning Department verifying compliance with all standards of Sec. 10.814, including the owner-occupancy requirement, and shall renew the certificate of use annually.

The motion passed unanimously.

**V. CITY COUNCIL REFERRAL – PUBLIC HEARING**

- A. Request for restoration of involuntarily merged lots at 27 Thaxter Road, Assessor Map 166, Lo t39.

Vice Chairman Moreau moved to recommend acceptance of the easements to City Council, seconded by Mr. Gamester. The motion passed unanimously.

**VI. ADJOURNMENT**

Mr. Gamester moved to adjourn the meeting at 8:08 p.m., seconded by Vice Chairman Moreau. The motion passed unanimously.

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Respectfully Submitted,

Becky Frey,

Acting Secretary for the Planning Board