

**REGULAR MEETING  
PLANNING BOARD  
PORTSMOUTH, NEW HAMPSHIRE**

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

**7:00 PM**

**September 19, 2019**

**MEMBERS PRESENT:** Elizabeth Moreau, Vice-Chairman; Colby Gamester; Jay Leduc; John P. Bohenko, City Manager; Ray Pezzullo, Assistant City Engineer; Jody Record; Jeffrey Kisiel; Corey Clark, Alternate

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

**MEMBERS ABSENT:** Dexter Legg, Chairman; Rebecca Perkins, City Council Representative; and Polly Henkel, Alternate

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**I. APPROVAL OF MINUTES**

A. Approval of Minutes from the August 15, 2019 and August 22, 2019 Planning Board Meetings.

Ms. Record moved to approve the Minutes from the August 15, 2019 and August 22, 2019 Planning Board Meetings, seconded by Mr. Gamester. The motion passed unanimously.

**II. PRESENTATIONS**

A. Informational Presentation on FY 2019-2024 Capital Improvement Plan Process and Schedule.

Planning Director Juliet Walker commented that the Capital Improvement Plan (CIP) is part of the City Charter. The CIP is a 6-year plan that is submitted to City Council and must be adopted 3 months before the budget is adopted. The Planning Board reviews the CIP plan as one of the non-regulatory functions of the Board. Information about the plan is available on the web site. The next deadline is October 15, 2019 for the submission of citizen project requests. The Planning Board will have a public hearing for this in November. It will include an overview of all the requests from the City Departments and citizens. The Advisory Committee will meet in December. After the Planning Board it will go to City Council. A CIP project has to meet at least one of the specific criteria listed on the web site. A CIP project is typically a major expenditure the City has to plan ahead for that is an infrequent or a non-reoccurring purchase. The CIP requests are generated by City Departments. The citizen requests are filtered through the City Departments. Current projects in the CIP are revisited every year to see if they need to be updated. The CIP summarizes all citizen requests that have been received and what action was taken. All projects must have a statement of need and justification. Projects are generated from the Master Plan, Bike/Pedestrian Plan, Federal State Mandates, the Water Master Plan, Citywide Infrastructures Plans etc. There are multiple methods for financing a CIP project including the General Fund, Grants, Bonds, City Revenues, State Funds, and Partnership Funds. Once all projects are submitted the Advisory Committee considers the priority level and any adjustments needed for timing and cost. The CIP is a planning document. It is not binding, but gives a good basis for financial planning.

### III. PUBLIC HEARINGS – ZONING AMENDMENTS

*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. Flood Plain Overlay District Zoning Amendments

Amendments to the Zoning Ordinance, Article 6 – Overlay Districts and Article 15 – Definitions to updated regulations related to the Flood Plain Overlay District including revisions for complying with National Flood Insurance Program regulations, addressing impacts of climate change and projected sea level rise, and clarifying thresholds for when properties are required to come into compliance with Flood Plain standards for development.

Planning Director Juliet Walker and Peter Britz spoke to this amendment. This was presented at the last meeting for a work session. There have not been any significant changes made since then. A lot of the changes made to the Flood Plain Overlay Zoning were done to comply with the National Flood Insurance Program. The required standard language has been incorporated. These changes need to be adopted before any new FEMA flood plans are adopted. There were also some revisions made to address impacts of climate change. One recommendation is to accommodate 2 feet of sea level rise. There were minor changes to what defines substantial improvement, but no changes to substantial damage. There will need to be revisions made to the subdivision rules and regulations in relation to these revisions. Areas that are less than 2 feet above the base flood elevation adjacent to the Special Flood Hazard Area will make the Extended Flood Hazard Area. New construction in those areas will be required to be at least 2 feet above the base flood elevation. This will apply to residential and non-residential new construction only. There were concerns about implications for requiring it for additions/restorations because it is mostly historic properties. There needs to be more consideration around the historic impact.

Mr. Britz commented that the Flood Risk Summary looks at the higher and lower probability for sea level rise. A 2-foot elevation for 2050 is a conservative number based on what they recommended. Their high is just over 2 feet. Other people around the state have made similar revisions. Rye added 2 feet and Hampton added 1 foot. Two feet seems like a reasonable approach and keeps the scale of the buildings consistent with the surroundings. The high estimate for the Coastal Resiliency Initiative in 2050 is just less than 2 feet. The recommendation for substantial improvements would be to change it from the 50% to 40%. Substantial damage should be kept at 50%.

Mr. Gamester questioned how it would be determined if the applicant has reached 40% substantial improvement. Mr. Britz responded that it would be covered in the building permit process.

Mr. Clark pointed out an area where it says during base flood discharge and questioned what that meant. Ms. Walker responded that was regulatory FEMA language. Mr. Clark questioned how the 2-foot area extended area related to the 500-year base flood elevation. Mr. Britz responded that there was not a lot of area shown on the 500-year flood, so it doesn't really line up.

### PUBLIC HEARING

John Chagnon of 200 Griffin Road commented that he understood this was a lot of good house keeping and the City is forward thinking in being stricter about climate change. However, the Extended Flood Hazard Area is concerning. The revision includes all areas including the Extended Flood Hazard Area, which is any area adjacent to the Special Flood Hazard Area and less than 2 feet above the base flood elevation. The FEMA mapping and Building Department live and die by the line on the map. The Extended Flood

Hazard Area could create a burden with present elevation information. A continuous land area could be a 50-acre lot. An area with a high elevation could separate the building area in a lower elevation. An applicant could be caught by surprise that they are in this area.

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

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

Ms. Walker noted that Staff has discussed creating a map to show what is impacted. The burden should not be on the property owner.

City Manager Bohenko to **recommend approval** to the City Council with amendments, seconded by Mr. Gamester. The motion passed unanimously.

#### **B. Wetlands Protection**

Amendments to the Zoning Ordinance, Article 10 – Environmental Protection Standards, Section 10.1010 – Wetlands Protection including adding an exemption for fences without footings, clarifying the characterization of impacts to the wetland and buffer, adding information related to the compensatory removal of impervious surface and the requirements for a wetland buffer enhancement plan, providing guidance on living shorelines for tidal areas and use of porous pavement in the wetland buffer, and delineating wetland buffer areas.

Planning Director Juliet Walker noted that they had a good conversation with the Conservation Commission about this. The changes include: an exemption for fences without footings, additional clarification on how to determine impacts on the wetland and buffer, clarifying the removal of impervious surface and what compensation would be considered, clarifying the buffer enhancement plan and adding a living shoreline policy for tidal areas. The submission of a plan to compensate for impervious surface does not guarantee a CUP. A section about porous pavement in the wetland buffer was added. There was also a piece added about requiring wetland boundary markers.

Mr. Clark noted that DES was rolling out new rules at the end of the year and questioned if any conflict may arise with the changes. Mr. Britz responded that the living shoreline changes were made to try to keep in line with DES changes. These changes did not create specific mitigation standards just mitigation concepts.

Mr. Pezzullo commented they might not want to limit the shape and material in the amendment about the fence. Mr. Britz confirmed they would work on the language.

### **PUBLIC HEARING**

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

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

Mr. Gamester moved to **recommend approval** to the City Council with amendments, seconded by City Manager Bohenko. The motion passed unanimously.

**IV. DETERMINATIONS OF COMPLETENESS**

**A. SITE PLAN REVIEW**

1. The application of **Dagny Taggart, LLC, Owner**, for property located at **3 Pleasant Street** requesting Site Plan approval.

Mr. Gamester moved to determine that the application is complete according to the Site Plan Review Regulations and to accept the application for consideration, seconded by Ms. Record. The motion passed unanimously.

**B. SUBDIVISION REVIEW**

1. The application of **Andrew Marden, Owner** for property located at **60 Elwyn Ave** requesting preliminary and final subdivision approval.

Ms. Record recused herself.

Mr. Gamester moved to determine that the application is complete according to the Subdivision Regulations and to accept the application for consideration, seconded by Mr. Clark. The motion passed unanimously.

**V. PUBLIC HEARINGS – OLD BUSINESS**

*The Board's action in these matters has been deemed to be quasi-judicial in nature.  
If any person believes any member of the Board has a conflict of interest,  
that issue should be raised at this point or it will be deemed waived.*

- A. POSTPONED** The application of the **City of Portsmouth, Owner** and **GZA Geoenvironmental, Inc., Applicant** for property located at **680 Peverly Hill Road** requesting Wetland Conditional Use Permit approval in accordance with Section 10.1017 of the Zoning Ordinance to construct three multi-purpose recreational fields and associated parking and a solid waste / recycling transfer station on the site of a reclaimed quarry with 489,592 sq. ft. of disturbance in the wetland buffer and 57,512 sq. ft. of direct disturbance to the wetland. Said property is shown on Assessor Map 254 as Lot 8-1 and lies within the Municipal (M) District. LU #19-169. **POSTPONED**

Mr. Gamester moved to review New Business Item A and Old Business Item A together and vote on them separately, seconded by Ms. Record. The motion passed unanimously.

**DISCUSSION AND DECISION OF THE BOARD**

Ms. Record moved to **postpone** this item until the October 17, 2019 Planning Board meeting, seconded by Mr. Pezzullo. The motion passed unanimously.

- B. The application of **Foundry Place, LLC, Owner**, for property located at **89 & 99 Foundry Place (previously addressed as Hanover Street)**, requesting a second 1-year extension of the Site Plan Review approval that was originally granted on November 16, 2017 and granted a 1-year extension on August 23, 2018 which will expire on November 15, 2019. Said property is shown on Assessor Map 138 as Lot 62 and lies within the Character District 5 (CD5) District. LU #19-154.

### **SPEAKING TO THE APPLICATION**

Mr. Kisiel recused himself.

Attorney Tim Phoenix spoke to the application. This project was approved for a mixed-use 4-story building with a penthouse. At the end of the first year approval they got an automatic extension. That is going to expire in November. The ordinance requires a TAC and Planning Board review for a second extension. The developers have reached delays to get the project started because of the Foundry Garage. There has been construction cost issues and no tenant. The TAC meeting has already happened and they recommended the approval of extension with stipulations. They have met 4 of the stipulations. The last one is meeting with DPW for electrical line coordination. That will happen. There are no changes that materially affect the currently approved site plan. The applicants are asking the Planning Board for an additional year to not lose momentum on the project that is already designed and approved.

Vice Chairman Moreau questioned if changes to utility was related to the street changes. Mr. Phoenix confirmed that was correct.

### **PUBLIC HEARING**

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

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

Mr. Gamester moved to **approve** a 1-year extension of the site plan to expire November 16, 2020, seconded by Ms. Record with the following stipulation:

- 1) The applicant shall work with DPW to determine how electrical/communication utility lines will be fed from Hanover Street and to verify removal or relocation of any utility poles or lines.

The motion passed unanimously.

- C. The application of **Dagny Taggart, LLC, Owner**, for property located at **3 Pleasant Street** requesting Site Plan approval for a proposed addition and renovation to the existing bank and office building with a 4,816 s.f. +/- footprint, 21,397 s.f. +/- gross floor area and associated site

improvements. Said property is shown on Assessor Map 107 as Lot 31 and lies within the Character District 5 (CD5) District. LU #19-161.

### **SPEAKING TO THE APPLICATION**

Tracy Kozack with JSA Architects, Mark McNab, John Chagnon, and Robbi Woodburn spoke to the application. Ms. Kozack noted that this was part of a larger development that includes 3 parcels. All 3 will be developed in conjunction with one overarching goal to enliven and enhance the pedestrian experience through community space, landscaping, and art. 3 Pleasant St. is the Bank of America building that is being renovated and added on to. The project proposes to rebuild and slightly enlarge the rear addition to put in an ADA accessible ramp and fire stairwell. The first floor will become a restaurant.

Ms. Woodburn commented that this was part of a larger development and there is significant landscaping on the plan. The proposal is to close the curb cuts and create a pedestrian oriented space. The pedestrian side of the building will be a different material than the sidewalk. The expanded sidewalk is for future development. There will be bands of blue stone in the paving. The space will be designed to let pedestrians walk through and have restaurant space outside.

Mr. Chagnon commented that the Staff and TAC reviewed the project. There are various easements that crisscross the site. There will be a new easement plan for the no build area. All three properties add up to more than an acre and are shown as a development area. There is a lot of community open space around buildings and in the middle of the buildings. Some of the rear addition will be removed to create new access that will comply with code. The site layout shows all the zoning standards. All of them were met except one variance was needed for rear setbacks. The curb cuts along Pleasant St. will be closed to make two alleyways that will be pedestrian only. The landscaping will be designed to be portable and can be moved if access is needed. Two parking spaces along Pleasant St. will be moved down. Then the plan is proposing to create a loading zone for the neighborhood. No parking spaces will be lost. Parking Traffic and Safety (PTS) has to approve the layout. The applicant went to PTS and they are in support of the concept. The landscape plan proposes to replace 2 trees in front of the building. They will be doing utility work and replacing the sidewalk. That work will most likely damage those trees. The Trees and Greenery Committee approved removing the existing trees and adding two new ones. The gas and water service will come in off Pleasant St. They will work with DPW on a better sewer connection.

Mr. Kisiel questioned where the trash would go for the new restaurant. Mr. Chagnon responded that 3 Pleasant St. would deal with the trash on its own prop. The plan includes a trash enclosure. The development understands that those bins are not allowed on RiRa's property. They are working with that company to find a solution. In the next round there will be a solution for that.

Mr. Clark requested that Mr. Chagnon walk through the drainage analysis. Mr. Chagnon responded that the existing site is almost 100% impervious. They looked at where the water was going now and where it was going in the future plans to make sure there was no impact to the City system. Mr. Clark noted that there was no drainage tie in for the roof. Mr. Chagnon responded that the tie in was yet to be shown. They need to get into the building to determine where the pipes go. Mr. Clark questioned if they looked into porous pavers. Mr. Chagnon responded that the surface needs to be sturdy enough for truck traffic. The danger of using porous pavers in this area is that water could end up in basements.

Mr. Pezzullo commented that there were some inconsistencies in the plans about the abandoned and proposed water service. There should provide more detail on that.

Mr. Gamester questioned what the incentive was for the community space. Mr. Chagnon responded that spoke to the 4<sup>th</sup> story of the building at 3 Pleasant St. Mr. Gamester questioned if they could get an incentive from this community space when other private parties have rights to that. Mr. Bruton confirmed they could. There is no exclusivity that exists. There is a letter from LBJ Properties requested that a condition of approval require a loading zone. That issue is addressed in in the staff recommendation. Mr. Mr. Bruton requested that the Board not require a loading zone because they are not in control of that. The City is. The applicant is doing all that they can to make that happen but ultimately it is up to the City.

Ms. Walker requested clarification on the alleyways impacted easement rights outlined in the letter. Mr. Bruton responded that would be resolved by providing a loading zone. Ms. Walker agreed that it is a civil matter if that easement needs to be clarified. Community space needs to have deeded public access to the City. Mr. Bruton confirmed they would do that. Vice Chairman Moreau commented that the restaurant would need to be fenced in for liquor licensing. That cannot be counted as community space. Mr. Bruton confirmed they would make sure it was consistent with staff regulations.

Mr. Gamester questioned if the new trees that would be planted could be bigger. Ms. Woodburn responded that they originally had them larger, but the City Arborist requested younger trees because they have a better chance of living longer with less maintenance.

Mr. Kisiel was concerned about settling with the decorative piece going in the pavement. Ms. Woodburn responded that it would be designed with a heavy-duty base, so settling won't be an issue.

Mr. Gamester questioned why the tip down was eliminated. Ms. Walker responded that was a request of the Transportation Engineer. It was eliminated because pedestrians would think it was safe to walk into the street there.

## **PUBLIC HEARING**

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

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

Mr. Gamester moved to **grant** Site Plan Review Approval, seconded by Mr. Pezzullo with the following stipulations:

### Conditions precedent (to be completed prior to the issuance of a building permit)

- 1) Final sewer, water service and stormwater management design shall be reviewed and approved by the Public Works Department.
- 2) Off-site improvements are subject to approval by the Parking, Traffic and Safety Committee and acceptance by City Council. Any substantial changes to what is presented and approved by the Planning Board shall require Amended Site Plan Approval.
- 3) The width of the no-build easement provided on the abutting property shall be reviewed and approved by the Building Inspector.



- 4) The community space easements shall be reviewed and approved by the Planning and Legal Departments prior to final approval by City Council.
- 5) Plans shall be updated to revise the location of the north side bike rack to the south side of the tree so as not to impede access to the alleyway.
- 6) The site plan and any easements and deeds shall be reviewed for pre-approval by the Rockingham County Registry of Deeds and subsequently recorded by the City or as deemed appropriate by the Planning Department.

The motion passed unanimously.

## VI. 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. **POSTPONED** The application of the **City of Portsmouth, Owner** for property located at **680 Peverly Hill Road** requesting Site Plan Review approval for the construction of recreation playing fields with associated lighting, parking, restrooms, stormwater management infrastructure, utilities and other site improvements. Said property is shown on Assessor Map 254 as Lot 8-1 and lies within the Municipal (M) District. LU #19-169. **POSTPONED**

## DISCUSSION AND DECISION OF THE BOARD

Ms. Record moved to **postpone** this item until the October 17, 2019 Planning Board meeting, seconded by Mr. Pezzullo. The motion passed unanimously.

- B. The application of **Andrew Marden, Owner** for property located at **60 Elwyn Avenue** requesting preliminary and final subdivision approval to subdivide one lot into two (2) lots as follows: Lot 22 as shown on Assessor Map 113 decreasing in area from 6,400 s.f. to 3,457 s.f. with 50' of continuous street frontage on Elwyn Avenue; and proposed lot 22-1 as shown on Assessor Map 113 with 2,943 s.f. in area and 50' of continuous street frontage on Sherburne Avenue. Said property is shown on Assessor Map 113 as Lot 22 and lies within the General Residence A (GRA) District. LU #19-113.

## SPEAKING TO THE APPLICATION

Ms. Record recused herself.

Eric Weinrieb from Altus Engineering spoke to the application. This property has frontage on Elwyn Ave. and Sherburne Ave. The proposal is to subdivide and make a second development lot. In June they received zoning relief for frontage and lot coverage. TAC recommended approval with stipulations and all of those have been addressed. The Staff Memo has four stipulations and they don't have concerns with any of them. The existing house has frontage on Elwyn Ave. and that won't change at all. The existing



driveway is on Sherburne Ave. The proposed building envelope has existing sewer drainage and water service they will be able to connect to.

Vice Chairman Moreau questioned what the other structures on the property was that were show in the aerial photo. Mr. Marden responded that they are all temporary and the shed is gone.

### **PUBLIC HEARING**

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

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

Mr. Gamester moved to **grant** Preliminary and Final Subdivision Approval, seconded by Mr. Kisiel with the following stipulations:

- 1) Lot numbers as determined by the Assessor shall be added to the final plat.
- 2) Property monuments shall be set as required by the Department of Public Works prior to the filing of the plat.
- 3) GIS data shall be provided to the Department of Public Works in the form as required by the City.
- 4) The final plat shall be shall be reviewed for pre-approval by the Rockingham County Registry of Deeds and subsequently recorded by the City or as deemed appropriate by the Planning Department.

The motion passed unanimously.

- C. Request by the Kane Company for naming of a new privately-owned and maintained road approved and constructed as part of the Borthwick Forest Subdivision (located off of Borthwick Avenue) as Eileen Dondero Foley Avenue.

### **SPEAKING TO THE APPLICATION**

Ms. Walker commented that this road is a subdivision road. Because it was created through a subdivision it has to come to the Planning Board. This will have a normal road sign with "PVT" on the end.

### **PUBLIC HEARING**

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

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

Mr. Gamester moved to **approve** the name of the street as Eileen Dondero Foley Avenue, seconded by City Manager Bohenko. The motion passed unanimously.

## **VII. CITY COUNCIL REFERRALS**

- A. Request by residents and homeowners of Chase Drive, Cutts Avenue, Forest Street, and Brigham Lane that properties along Chase Drive and Cutts Avenue be re-zoned from Gateway Neighborhood Mixed Use Center (G2) to Single Residence B (SRB).

Vice Chairman Moreau commented that it would be good to let City Council know where the Planning Board is at with this.

Ms. Walker noted that they received this referral from City Council from a Citizen Petition. They went through a Public Hearing and heard a lot from neighborhood. The Planning Department recommended considering a new zone that would be between G1 and G2. Staff is willing to continue to work on G3 and the neighborhood is also in favor of that. The recommendation was that the Planning Board not approve the zoning request, however, in the report back they could include that the Planning Board is open to considering a G3 district. The City Council can evaluate if they are in favor of continuing the effort.

Vice Chairman Moreau commented that they should include a draft showing the progress, so City Council can confirm if they are going in a good direction.

City Manager Bohenko moved to recommend NOT to approve the rezoning request. Additional info will be provided on the possibility of G3 Zoning for the Council to consider, seconded by Mr. Gamester. The motion passed unanimously.

### **VIII. OTHER BUSINESS**

- A. Request by Eversource for the City to grant a utility easement across property located at 125 Cottage Street (Doble Center).

City Manager Bohenko moved to grant a utility easement across property located at 125 Cottage Street (Doble Center), seconded by Ms. Record. The motion passed unanimously.

### **VI. ADJOURNMENT**

Ms. Clark moved to adjourn the meeting at 8:47 p.m., seconded by Mr. Gamester. The motion passed unanimously.