

**PLANNING BOARD  
PORTSMOUTH, NEW HAMPSHIRE**

**Remote Meeting Via Zoom Conference Call**

to access by web <https://zoom.us/join>

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Meeting ID: 959 699 889

Password: 021228

Per NH RSA 91-A:2, III (b) the Chair has declared COVID-19 outbreak an emergency and has waived the requirement that a quorum be physically present at the meeting pursuant to the Governor's Executive Order 2020-04, Section 8, as extended by Executive Order 2020-5, and Executive Order #12, Section 3. Members will be participating remotely and will identify their location and any person present with them at that location. All votes will be by roll call.

**7:00 pm**

**MAY 21, 2020**

**MINUTES**

**MEMBERS PRESENT:** Dexter Legg, Chair; Elizabeth Moreau, Vice Chair Ray Pezzullo, Assistant City Engineer; Jeffrey Kisiel; Jody Record; Jay Leduc; Colby Gamester; and Corey Clark, Alternate; Polly Henkel, Alternate

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

**MEMBERS ABSENT:** Karen Conard, City Manager; Peter Whelan, City Council Representative;

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**I. APPROVAL OF MINUTES**

- A. Approval of Minutes from the April 9, 2020, April 16, 2020, April 23, 2020 and April 30, 2020 Planning Board Meetings

Chairman Legg commented that Jillian Harris should be deleted from the Members Absent line of the April 23, 2020 Minutes because she is not a member of the Planning Board.

Mr. Gamester moved to approve the Minutes from the April 9, 2020, April 16, 2020, April 23, 2020 and April 30, 2020 Planning Board Meetings, seconded by Vice Chairman Moreau. The motion passed unanimously. Vice Chairman Moreau abstained from voting on the April 30, 2020 minutes because she was not present at the meeting.

**II. DETERMINATION OF COMPLETENESS**

**SITE PLAN REVIEW**

- A. The application of **Bonza Buildings, LLC, Owner**, for property located at **41 Salem Street** requesting Site Plan Review Approval.

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

### **SUBDIVISION REVIEW**

- A. The application of the **Peter J. Loughlin Revocable Trust of 2003, Cynthia & John Hebert and Linda Langley, Owners**, for properties located on **Thaxter Road and Fells Road** requesting Preliminary and Final Subdivision Approval.

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

- B. The application of **Matthew Wajda, Owner**, for property located at **183 Coolidge Drive** requesting Preliminary and Final Subdivision approval.

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

### **III. PUBLIC HEARINGS – NEW BUSINESS**

*The Board's action in these matters has been deemed to be quasi-judicial in nature.*

*If any person believes any member of the Board has a conflict of interest, that issue should be raised at this point or it will be deemed waived.*

- A. The application of the **Peter J. Loughlin Revocable Trust of 2003, Cynthia & John Hebert, and Linda Langley, Owners**, for properties located on **Thaxter Road and Fells Road** requesting Preliminary and Final Subdivision Approval (Lot line revision) for 3 lots as follows: Lot 5 on Assessor Map 167 decreasing in area from 209,821 s.f to 209,347 s.f.; Lot 6 on Assessor map 167 increasing in area from 11,508 s.f. To 11,712 s.f.; and Lot 7 on Assessor map 167 increasing in area from 10,532 s.f to 10,802 s.f. Said properties are shown on Assessor Map 167, Lots 5, 6 & 7 and lie within the Single Residence B (SRB) District.

### **SPEAKING TO THE APPLICATION**

Peter Loughlin spoke to the application. Mr. Loughlin commented that lot consists of 7 acres of open space between Thaxter Rd. and Spinney Rd. A border survey was completed last summer and there were some discrepancies with the property line. This proposal is to convey land to one neighbor and swap land with another neighbor. This will clean up the property lines.

## **PUBLIC HEARING**

Eric Weinrieb of 9 Middle Road commented that changing the lot lines to help neighbors and straighten out the issues was a good thing. Mr. Weinrieb supported the application.

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

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

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

- 1) Property monuments shall be set as required by the Department of Public Works prior to the filing of the plat.
- 2) GIS data shall be provided to the Department of Public Works in the form as required by the City.
- 3) The final plat(s) shall be recorded at the Registry of deeds by the City or as deemed appropriate by the Planning Department

The motion passed unanimously.

- B. The application of the **Society for the Protection of Forests, Owner**, for property located at **400 Little Harbor Road** requesting Wetland Conditional Use Permit approval to replace a failing septic system resulting in 2,200 square feet of permanent impact and 3,000 square feet of temporary impact in the inland wetland buffer. Said property is shown on Assessor Map 203 Lot 8 and lies within the Rural Residential (R) District.

Vice Chairman Moreau moved to review New Business Item B and Item C together and vote on them separately, seconded by Ms. Record. The motion passed unanimously.

## **SPEAKING TO THE APPLICATION**

Eric Weinrieb from Altus Engineering spoke to the application. The site is at the end of Little Harbor Rd. It is a 30-acre parcel and home of the Carey Cottage historic property. In 2019 there was a proposal to tear down the Carey Cottage because it was in disrepair and there were no opportunities to renovate it. A non-profit has come forward to renovate it. There is inadequate water supply to the cottage today. There will be a new main coming from Little Harbor Rd. The line will run across the site through the forested open field area, down to a causeway walking path, through the lawn, and then around into the building. The proposed route from the back of the building to the causeway follows the existing waterline. The current line route impacts a lot of the buffer area and is close the resource. The proposed route avoids the buffer and the resource. The other project deals with the Carriage House on the property. It has a septic in the back that is not a State approved system. It was built and maintained by the previous owner. The proposal is to put in a new septic system. The only place to put it is in the small developable area for the property. Most of that area consists of the building and the parking lot or has ledge outcrop. The septic and leach field are sited as far as possible from the wetland. The leach field is 86 feet from the wetland. There is 2,200 sf of permanent disturbance and 3,000 sf of temporary disturbance. The Conservation Commission

requested that they use a conservation seed mix in the disturbed area that was not lawn. There is no objection to that request.

Mr. Clark commented that this was a much better run for this line. Mr. Clark requested more detail on the plan to restore the causeway. Mr. Weinrieb responded that they just got comments back from the Wetlands Bureau with a similar question. It is unclear what exactly is there today. Mr. Weinrieb assumed that it's an old stone culvert with stone and rubble that was backfilled. The water just seeps through. The Conservation Commission asked if it should be daylighted. However, the Wetland Bureau felt that they should try to mimic the current condition to not change the freshwater wetland. Mr. Clark noted that the ultimate goal was not to drain the wetland inadvertently. Mr. Weinrieb responded that was correct. The goal was to have no impact the wetland. The water line will go in below the rock with a sand cushion between to avoid frost impact.

### **PUBLIC HEARING**

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

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

Vice Chairman moved to **grant** Wetland Conditional Use Permit Approval as presented, seconded by Mr. Gamester. The motion passed unanimously.

- C. The application of the **Society for the Protection of Forests, Owner**, for property located at **400 Little Harbor Road** requesting Wetland Conditional Use Permit approval for a temporary disturbance of 7,700 square feet in the inland and tidal wetland buffer. Said property is shown on Assessor Map 203 Lot 8 and lies within the Rural Residential (R) District.

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

Vice Chairman Moreau moved to **grant** Wetland Conditional Use Permit Approval, seconded by Mr. Kisiel with the following stipulation:

- 1) Where excavation for the waterline occurs in the wetland buffer a conservation seed mix shall be planted, with the exception of areas in the buffer of existing lawn and a gravel path that crosses the waterline. Both of those areas shall be restored in kind.

The motion passed unanimously.

Chairman Legg clarified that this approval was just for the Wetland CUP. Any outstanding concerns about meeting all of the City requirements for setbacks etc. need to be resolved with the City Staff. This approval does not resolve that.

Vice Chairman Moreau commented that after dealing with this property it was nice to see it moving forward with something positive happening.

- D. **REQUEST TO POSTPONE** The application of the **Maud Hett Revocable Trust, Owner**, for property located on **Banfield Road** requesting Conditional Use Permit approval for an Open Space Planned Unit Development according to the requirements of Section 10.725 of the Zoning Ordinance and Site Plan Review approval for the construction of 22 single-family homes and a new road with related parking, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 256 Lot 02 and lies within the Single Residence A (SRA) District. **REQUEST TO POSTPONE**

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

Mr. Gamester moved to **postpone** this request to the June 18, 2020 Planning Board meeting, seconded Mr. Kisiel. The motion passed unanimously.

- E. The application of **Bonza Buildings, LLC, Owner**, for property located at **41 Salem Street** requesting Site Plan Review Approval to demolish the existing single-family residence and construct 3 new dwelling units, with related grading, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 144 Lot 31 and lies within the General Residence C (GRC) District.

### **SPEAKING TO THE APPLICATION**

John Chagnon from Ambit Engineering spoke to the application. There is an existing single-family residence on the Salem St. corner of the property. The proposal is to remove the existing residence and put in three dwelling units. The lot slopes from Salem St. to the northwest and abutting neighbors. Two of the units are perpendicular on Salem St. and one is parallel to Salem St. in the back. The proposed buildings were originally set back more, but they have been brought forward based on TAC comments. TAC was concerned about the basement water issues in neighborhood. As a result, the project was raised up above the seasonal high-water table. There will be a driveway off Salem St. and each building has 2 parking spaces and a garage. There will be a stoop and door along Salem St. for the two front units. The provides an entrance feel to the building from the street. The buildings will have drip edges to contain runoff. The utilities will come from Salem St. When this street was reconstructed the hard pipe drainage was not included. The grading plan avoids the water table by raising the site. The runoff will be redirected to the driveway and collected by a catch basin on Salem St. and hard piped into the drainage system on McDonough St. This will decrease the water runoff going to the abutters. All water from the developed area to the top of the slope will be collected and piped into the storm drainage system. There is a tree on Salem St. that was there before street reconstruction. That tree needs to be removed and they got approval to remove it from the Trees and Greenery Committee. The plan is to plant three street trees to replace the one that needs to be removed. The demolition plan for the existing residence is included. The Staff Memo included items that TAC wanted addressed and they have been addressed.

Vice Chairman Moreau commented that raising the site seems like it will look like a hill in the middle of the street. Vice Chairman Moreau questioned how this will look integrated into the neighborhood. Mr. Chagnon responded that Salem St. changes in grade, so it is not as pronounced. From the street level all buildings are raised from the street to the first floor. The building and grading will be uniform and smooth. There is fill in the back that is partially to keep the area of the lot flatter so a future residence would have

the ability to use the yard and pitch the water to decrease runoff. Over time the landscaping will provide some screening that won't wall off the view to abutters. The banking will disappear with vegetation.

Mr. Clark questioned if this development needed to have basement in the units. The buildings are almost 35 feet tall and there is another 5-feet of fill for the basement. The basement could be reduced to a crawl space or eliminate it completely. Mr. Chagnon responded that going to a slab or crawl space would result in losing a significant amount of space on the first floor to accommodate utilities. The basement provides space for utilizes and storage. The height complies with the ordinance.

Chairman Legg questioned if the ordinance provided any guidance about the relationship between a raised grade and total building height. Ms. Walker responded that it was silent on fill and how to deal with that. The ordinance does not address the existing grade vs. grade at the completion of the project. It does state that a property owner cannot create drainage issues that impact abutting properties. Chairman Legg commented that the primary purpose to raise the grade in this project is to solve the existing storm water management issue.

Vice Chairman Moreau questioned if they could add a stipulation to follow up and ensure that the drainage plan is working in the future. Ms. Walker confirmed that it would be appropriate to follow up be on the storm water management. Mr. Pezzullo added that they should stipulate an "as built" for the site to make sure it's built as designed. That may alleviate concern. Chairman Legg questioned if there was risk of erosion on the slopes. Mr. Chagnon responded that they are a 2 to 1 slope, so they are stable. They will be less likely to be mowed and vegetation will take over.

Mr. Clark questioned if they considered a retaining wall instead of a slope. Mr. Chagnon responded that it was, but they felt it would cause more flooding problems in the neighborhood to infiltrate. The slope helps to bring the building lower with vegetation.

## **PUBLIC HEARING**

Charles Cocchiario of 45 Salem St. questioned how much of the concrete walkway between the properties would remain. Mr. Cocchiario questioned how tall the slope would be at the side of his house and expressed concern about the existing drainage issues. Mr. Cocchiario questioned if there would be trees along there too.

Mr. Chagnon responded that the plan shows that the concrete walkway would be saw cut at the property line and the fence would be taken out. The slope would be a 2-foot rise. The structure will have a drip edge that will catch runoff and divert it underground to a closed drainage system. There is landscaping included in the plan. If Mr. Cocchiario did not want landscaping, then it can be taken out.

Second Time Speakers:

Mr. Cocchiario confirmed that he was amenable to landscaping.

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

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

Mr. Clark commented that he understood the building height allowed for 35 feet and the proposed house from soil surface to peak is 34.9. Mr. Clark commented that they were pushing the grading to get the basement in. It was concerning.

Mr. Gamester commented that they are doing it for the right reason. If someone was buying the lot for a single-family residence it would not be before a Board review. This Board can review and refine the drainage.

Mr. Clark confirmed that he would vote in favor, but it seems like a backwards way of getting things in.

Chairman Legg commented that he shared similar concerns, but this plan is creating a plateau partly to deal with drainage. If drainage wasn't an issue, then they wouldn't see this sort of approach. Chairman Legg was willing to support project.

Vice Chairman Moreau commented that there is a dip from the sidewalk that goes down the south side. This grading will bring it up to the sidewalk.

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

- 1) Sheet C6 shall be updated to add required note for existing water service to be capped at the main;
- 2) The site plan shall be recorded at the Rockingham County Registry of Deeds or as deemed appropriate by the Planning Department;
- 3) City DPW shall confirm drainage design and function prior to final release of the Site Review Bond by the City.

The motion passed unanimously.

- F. **REQUEST TO POSTPONE** The application of **Richard Fusegni, Owner**, for property located at **1574 Woodbury Avenue** requesting a Conditional Use Permit for a drive-through facility in accordance with Section 10.440 (19.40) of the Zoning Ordinance and Site Plan Review Approval for the construction of a new retail bank with parking, utilities, landscaping, lighting, drainage and associated site improvements. Said property is shown on Assessor Map 238 Lot 17 and lies within the Gateway Neighborhood Mixed Use Corridor (G1) District.  
**REQUEST TO POSTPONE**

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

Mr. Gamester moved to **postpone** this request to the June 18, 2020 Planning Board meeting, seconded Ms. Record. The motion passed unanimously.



- G. The application of **Matthew Wajda, Owner**, for property located at **183 Coolidge Drive** requesting Preliminary and Final Subdivision approval to subdivide a lot with an area of 20,444 s.f. and 209' of street frontage into two (2) lots as follows: proposed Lot 1 with an area of 10,113 s.f. and 85' of continuous street frontage; proposed Lot 2 with an area of 10,330 s.f. and 124' of continuous street frontage. Said property is shown on Assessor Map 268 Lot 29 and lies within the Single Residence B (SRB) District.

### **SPEAKING TO THE APPLICATION**

John Chagnon from Ambit Engineering spoke to the application. The proposal is to subdivide one lot into 2 lots. The lot currently has a single-family residence, detached garage, and shed on the west half near Coolidge Dr. The plan draws a line down the middle to create another lot with frontage on Grant Ave. The existing conditions plan shows that it is mostly lawn with some trees on edge. There is a gentle slope from Coolidge Dr. to Grant Ave. There is a low spot on the north west corner of the property which goes to the northern abutting property. It does not create a wetland, so there is good drainage in that area. TAC requested a conceptual house plan be developed for the new lot. That is included in the packet. It would meet setback requirements with a driveway off Grant Ave. There is a proposed rain garden to mitigate the impervious surface the house would create. Utilities would come in off Grant Ave. The detailed grading shows the rain garden. That will result in less runoff than what exists now even with the new house construction. They have no issues with the Staff Memo recommendations.

### **PUBLIC HEARING**

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

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

Vice Chairman Moreau moved to **grant** Preliminary and Final Subdivision approval, seconded by Ma. Record with the following stipulations:

- 1) Property monuments shall be set as required by the Department of Public Works prior to the filing of the plat.
- 2) GIS data shall be provided to the Department of Public Works in the form as required by the City.
- 3) The final plat shall be recorded at the Registry of deeds by the City or as deemed appropriate by the Planning Department.
- 4) Construction of the rain garden shall be witnessed by DPW and/or by a certified design engineer and be in conformance with the NH stormwater manual.

The motion passed unanimously.

## **IV. CITY COUNCIL REFERRALS**



**A. Portsmouth Housing Authority – Release of Reverter**

Vice Chairman Moreau moved to **postpone** this request to the June 18, 2020 Planning Board meeting, seconded Ms. Record. The motion passed unanimously.

**B. Request for Report Back Regarding Impact Fees**

Ms. Walker commented that the information in the packet gives an overview on how the impact fees would be established according to State Statuette. The City would need to establish a methodology which allows Staff to assess impact fees proportionate to the public capital facility and identify what capital costs would be included. It would have to be done using a specific formula to asses for each project. The City would have to update the impact fee ordinance which would involve going through the process of enacting a local ordinance. Impact fees cannot be used to correct existing deficiencies. They can't be used for operation and maintenance costs. One concern management has always had is that impact fees have to be expended within 6 years and there have been situations where those funds have to be returned. In order to be legally defensible, the City needs a local methodology on how it assesses impact fees. The methodology needs to be done by a qualified expert because it takes analysis. The Planning Department's preference would be to contract with a qualified expert. They would be required to do a periodic review to keep impact fees current. Other communities that have implemented impact fees have them come in every 3-5 years to assess. Costs to manage and record impact fees are an estimated 20 hours a month for administration staff, so there are some ongoing costs associated that should be considered. They may balance out but there are ongoing considerations. Today the City does capital cost contributions like mitigation or direct improvement costs. Pretty much every application has some sort of offsite improvement involved and does an in kind fee contribution. The report included a spreadsheet of the exactions that have come in from developments. They keep track of them and try to expend on the cost in a timely fashion. This is not limited to a 6-year time frame because it is not an impact fee. The City is not as legally at risk this way. Portsmouth is a desirable community to develop in, so they are in a good position to ask quite a bit from the developers. Portsmouth has been in a good negotiation position with developers without impact fees. The Board can either move to not support impact fees and vote on that. Or the Board can move to support and recommend to City Council that they do it via an outside contractor to develop the impact fee process.

Mr. Kisiel requested clarification that it would take 20 hours a month to the manage impact fees. Ms. Walker responded that based on Dover's experience that is what it takes to do a comprehensive tracking of the impact fees. If Portsmouth were to consider impact fees, then they would want to consider all costs. Mr. Kisiel questioned what the cost for the contract expert might be. Ms. Walker responded that the initial cost could be \$30,000-50,000 and the ongoing would be in the range of \$10,000.

Mr. Clark requested more information on the process they do today. Ms. Walker responded that all of the requests for mitigation are done through an evaluation similar to impact fees. They want to know what the development will have impact on. They need to show a connection to the impact. They assess the overall cost and break it down to what they think the development will contribute to that need. It is not common to have developer front the full cost. It's usually as a contribution to help complete an improvement or do a study. They usually request a fair share contribution based on engineering costs and the demand that development will create to that need. The most common

requests are traffic related and that is very easy to allocate based on data. The City may have planned water and sewer projects and the City may ask a developer to contribute a fair share related to that.

Ms. Record requested more detail on how an impact fee could be used. Ms. Walker responded that it needed to be used toward an identified capital need. It has to be tied to the CIP and expended within 6 years.

Mr. Gamester moved to recommend that the City Council not consider establishing impact fees at this time, seconded by Vice Chairman Moreau.

Mr. Gamester commented that he did not like impact fees and did not think it was appropriate for Portsmouth. Everything the Planning Staff and Boards go through today is a well thought out calculation. Impact fees seem prohibitive and like an accounting nightmare.

Vice Chairman Moreau added that based on the CIP and development there is not a whole lot of justification to ask for impact fees. Most projects are not done within 6 years' time. Vice Chairman Moreau was concerned they would be giving the money back. It is more constructive how they are doing it now.

Chairman Legg commented that this would be a highly structured legal process that would be driven by state regulations. This is the worst time to be adding workloads and dollars to the staff. If they were in excess, then it would be interesting to see the study because it would demonstrate that it would be beneficial or confirm that there is no advantage. However, now is not the right time to think about impact fees.

Mr. Clark commented that what they do now works really well. If this was a municipality with a lot of development in one area and another area that needed a lot of work and attention, then they would need to shift funds. This city is not big enough for that.

Motion passed unanimously.

Mr. Gamester moved that if the City Council decides to consider establishing impact fees at this time, the Council request that the City Manager work with City staff to develop a scope of work and estimate of cost for services to contract with a qualified expert to complete an impact fee analysis and develop a recommended methodology for the City, seconded by Vice Chairman Moreau. The motion passed unanimously.

### C. Conservation Easement for 107-acre property adjacent to the Bellamy Reservoir.

Ms. Walker commented that the City's Water Divisions has been identifying and protecting property around their water supply. They have partnered with the South East Land Trust for a purchase price and completion of a conservation easement for this property to benefit protection on water supply. Land acquisition is referred to the Planning Board from City Council prior to The Council taking action on it.

Mr. Clark questioned if timber harvesting would still be allowed under this easement. Ms. Walker was not sure.

Chairman Legg commented that presumably this easement would be similar to other easements that have already been established surrounding this body of water. Ms. Walker confirmed that was correct.

Mr. Gamester moved to **recommend that the City Council** proceed with acquisition of a conservation easement for the 107-acre property in Madbury owned by Mary Ellen Duffy, seconded by Ms. Record. The motion passed unanimously.

**V. ADJOURNMENT**

Ms. Record moved to adjourn the meeting at 8:45 p.m., seconded by Mr. Gamester. The motion passed unanimously

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Respectfully submitted,

Becky Frey,  
Acting Secretary for the Planning Board