

**PLANNING BOARD  
PORTSMOUTH, NEW HAMPSHIRE**

**Remote Meeting Via Zoom Conference Call**

Per NH RSA 91-A:2, III (b) the Chair has declared the 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 2021-06, and Emergency 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 20, 2021**

**MINUTES**

**MEMBERS PRESENT:** Dexter Legg, Chair; Elizabeth Moreau, Vice Chair Karen Conard, City Manager; Peter Whelan, Ray Pezzullo, Assistant City Engineer; Colby Gamester; Corey Clark; Peter Harris; Rick Chellman; and Polly Henkel, Alternate

**ALSO PRESENT:** Juliet Walker, Planner Director

**MEMBERS ABSENT:**

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**I. APPROVAL OF MINUTES**

A. Approval of the Planning Board minutes from the April 15 and 22, 2021 meetings

City Council Representative Whelan moved to approve the Planning Board minutes from the April 15 and 22, 2021 meetings, seconded by Mr. Gamester. The motion passed unanimously.

**II. 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. REQUEST TO POSTONE** Request of **Stone Creek Realty, LLC, (Owner), and CPI Management, LLC, (Applicant)**, for property located **53 Green Street** for a Wetland Conditional Use Permit according to Section 10.1017 of the Zoning Ordinance for the demolition of an existing building, construction of a 5-story mixed-use building and renovation of an existing parking area that will result in 98 square feet of impervious surface in the 25' to 50' tidal wetland buffer zone and 8,425 square

feet of impervious surface in the 50' to 100' tidal wetland buffer zone representing an overall net reduction of 3,058 square feet of impervious surface in the tidal wetland buffer areas from the existing condition. Said property is shown on Assessor Map 119 Lot 02 and lies within the Character District 5 (CD5) District, the Historic District, and the North End Incentive Overlay District.

### **REQUEST TO POSTPONE**

City Manager Conard moved to postpone this application to the June Planning Board Meeting, seconded by City Council Representative Whelan. The motion passed unanimously.

- B. Request of **Noble Island Condominium Association, (Owner) and CP Management, Inc. (Applicant)**, for property located at **500 Market Street** for a Wetland Conditional Use Permit according to Section 10.1017 of the Zoning Ordinance to remove and replace existing decks on Buildings A, B, and C including the addition of new structural supports with no expansion of the existing footprint resulting in 27 square feet of permanent impact and up to 1,240 square feet of temporary impacts all within the 100' tidal wetland buffer area. Said property is shown on Assessor Map 120 Lot 2 and lies within the Character District 4-L1 (CD4-L1) District.

### **SPEAKING TO THE APPLICATION**

Jeremy Degler spoke to the application. There will be 27 sf of permanent impact with the proposed deck replacement. Currently the decks have steel beams that are starting to rust through. The beams will be replaced with a concrete pier structure. There will not be any increase in footprint. There will be 1,240 sf of temporary impacts and everything will be restored to its original condition. The Conservation Commission requested that they add more plantings along the rip rap, and that will be included.

### **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**

Mr. Clark moved to **grant** a Wetland Conditional Use Permit as presented, seconded by Vice Chairman Moreau with the following stipulations:

- 1) The property owners shall utilize NOFA (Northeast Organic Farming Association) approved practices (or comparable equivalent) for maintenance of the area between the decks and the waterline.

- 2) The applicant shall consider other salt tolerable plantings in addition to grass for planting along the area between the decks and the waterline.
- 3) Any treatment to the decks (i.e. bleaching) shall be done in a manner to prevent overspray or contamination of soil or water.
- 4) The applicant shall use composite decking in order to avoid the use of paint and other chemical treatment required for wooden decks.

The motion passed unanimously.

- C. **REQUEST TO POSTPONE** Request of **Brora, LLC, Owner**, and **210 Commerce Way LLC, Applicant**, for property located at **Shearwater Drive (at intersection of Portsmouth Boulevard and Market Street)** for a Wetland Conditional Use Permit according to Section 10.1017 of the Zoning Ordinance for an after the fact approval for cutting of vegetation on 88,700 square feet in the wetland and vegetated buffer areas. Said property is shown on Assessor Map 217 Lot 2-1975 and lies within the Office Research (OR) District.

#### **REQUEST TO POSTPONE**

City Council Representative Whelan moved to postpone the application to the June Planning Board Meeting, seconded by City Manager Conard. The motion passed unanimously.

### **III. PUBLIC HEARINGS – CITY COUNCIL REFERRAL**

- A. Request of **Todd Buttrick, Owner**, for the restoration of involuntarily merged lots at **900 Middle Road** to their pre-merger status pursuant to NH RSA 674:39-aa.

#### **SPEAKING TO THE APPLICATION**

Ms. Walker commented that the applicant was not here to speak. This is a different process than other applications. The City Assessor Rosann Maurice-Lentz was present to provide a summary and answer any questions.

Ms. Maurice-Lentz commented that she has reviewed everything and there are other things to consider in addition to the boundary lines. Any overt actions that may have happened to treat the parcel as one property should be considered as well. The aerial photo of this property shows that the house on Middle Rd. is very close to the property line. There was a driveway permit request to put in a driveway on the other parcel to service the house. That is an overt action to combine the property into one parcel. The house does not meet the setback requirements from the other parcel. The three parcels on Middle Road were combined at one time by the Assessor. The Woodworth Ave. parcel was combined at a later date. The three Middle Road

parcels were combined through overt action. The only one that may not have been was the Woodworth Ave parcel. Ms. Maurice-Lentz commented that they have always interpreted the statute that the merge and unmerge was all or nothing. This situation may not meet the “all or nothing” interpretation because the parcels were merged separately at two different times. Mr. Buttrick did not specify what he wanted merged or unmerged. Ms. Maurice-Lentz’s recommendation was not to unmerge the parcels. If Mr. Buttrick wants to come back later and request to unmerge the Woodworth Ave. parcel, then the Board can consider that in the future.

Mr. Clark questioned if they could make the recommendation to parse out the merger. Ms. Maurice-Lentz responded that in the past the Planning Board and Assessor’s Office have interpreted the statute to read that the parcels all have to be unmerged or none of them. The difference with this one is that lot 60 was not merged at the same time as the Middle Road merger. They were two different mergers. The interpretation of the statute depends on the community. It is unclear if the applicant is interested in the unmerging the Woodworth Ave. lot.

Ms. Walker commented that they put it on the applicant to be specific on what they are requesting. The Board should not interpret for them.

Mr. Chellman clarified that the application as submitted was for all 4 to be unmerged and application as submitted should be denied. Mr. Chellman questioned if the applicant would be able to come back and talk about lot 60 if they wanted to. Ms. Walker confirmed that was correct.

## **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 recommend that the City Council **deny** this request as recommended by the City Assessor, seconded by Mr. Clark.

Mr. Chellman questioned if the motion should be to deny as submitted without prejudice of coming back. Chairman Legg responded that the motion should be kept simple. The applicant would be able to come back if they chose to.

Mr. Gamester questioned if it would make sense to postpone the application instead of denying it. The City could reach out to clarify the request. Chairman Legg responded that it would be a separate request if they wanted to unmerge one particular lot. Mr. Gamester questioned if the applicant was aware that there were two different mergers. Ms. Maurice-Lentz responded that she was not sure Mr. Buttrick wants the Woodworth Ave. lot unmerged. He did not seem

interested in that during their conversations. Ms. Maurice-Lentz suggested that the applicant proceed with this application and then come back based on what happens.

Chairman Legg commented that the Board should proceed by considering the request as presented, and the motion that was on the table.

The motion passed unanimously.

Chairman Legg commented that they have consistently followed the “all or none” approach. They need to be careful in changing the approach to ensure they are treating the applicant fairly. Ms. Maurice-Lentz clarified that there were no supreme court rulings on the “all or none” interpretation. It is just their interpretation of the statute.

#### **IV. PRELIMINARY CONCEPTUAL CONSULTATION**

- A. Request of **Naveesha Hospitality, LLC, Owner, and Monarch Village, LLC, Applicant**, for property located at **3548 Lafayette Road** for Preliminary Conceptual Consultation for a multi-family residential redevelopment consisting of 75 units in 6 existing buildings and 2 proposed new buildings with associated site improvements. Said property is shown on Assessor Map 297 Lot 6 and lies within the Gateway Corridor (G1) District.

#### **SPEAKING TO THE APPLICATION**

Eric Saari from Altus engineering spoke to the presentation. The site is the old Wren’s Nest Motel on Lafayette Rd. The site has an eclectic assortment of buildings from standard motel rooms to detached cottages. There was a restaurant, koi pond, and indoor pool. The majority of the buildings will be redeveloped and two more will be added. There will be a total of 8 buildings. There will be apartments ranging in size from studios to three bedrooms. The road will be formalized, and parking will be added to match the ordinance. The circulation of the site will comply with fire truck requirements. A variance is required because they cannot comply with the 50% lot line build out. It is an existing condition. A CUP from Planning Board is required for general residential development. The project is very straightforward. An internal assessment has shown everything is in working order. They are working on the elevations and floor plans for the two new buildings.

Vice Chairman Moreau questioned if they had looked at the traffic implications for this project. Route 1 can be busy and turning left out of the site may be a problem. Mr. Saari responded that they have not done a traffic study at this time but can do one if the Board wishes. They will need to work with DOT on this project. Vice Chairman Moreau confirmed that they should do a traffic study.

Mr. Chellman questioned if there were any non-vehicle pathways on that site. Mr. Saari responded that they would be adding proposed sidewalks to connect the site. They were not planning to connect to the trail network. There is conservation land in the back that was done as part of the hospital construction. The project is proposing an 8-foot wide multi use path on Route 1. Mr. Chellman questioned if residents could access the land in the back. Ms. Walker commented that there was still a question on how much access was allowed on that land.

Mr. Clark commented that it was good to a project reusing some of the existing structures out there.

Chairman Legg questioned if they anticipated any issues for storm water management. Mr. Saari responded that the site had good soils, so they should be able to treat and infiltrate all stormwater. It will be an improvement to the closed drainage system there now.

Chairman Legg commented that it was a straightforward project, and good to see buildings being reused. It will be interesting to see the traffic study results for this site.

City Manager Conard commented that she was worked professionally with some of the members on the project team. In the future the City Manager will recuse herself from the application.

- B. Request of **Banfield Realty, LLC, Owner** for property located at **375 Banfield Road** for Preliminary Conceptual Consultation for the construction of a 75,000 s.f. industrial warehouse building and associated parking, stormwater management, lighting, utilities and landscaping. Said property is shown on Assessor Map 266 Lot 7 and lies within the Industrial (I) District.

### **SPEAKING TO THE APPLICATION**

Rob Graham and Bernie Pelech spoke to the presentation. The property was formally a series of automobile uses and salvage yard. The proposal is to put in a 75,000-sf warehouse. The warehouse circulation will be on one side of the building. They are still working through the TAC process. The building will be a rectangle warehouse, there will be parking in the south, and a truck loading to the rear.

Vice Chairman Moreau commented that the plan was filling in the existing septic and they are building over the leach field. Vice Chairman Moreau questioned what they were doing for utilities. Mr. Graham responded that they would be removing the leach field and then installing a new leach field and septic tank near the entryway. Vice Chairman Moreau questioned if the R-tanks were related to the septic. Mr. Graham responded that the R-tanks were related to the drainage.

Mr. Clark commented that the sight lines on Banfield Rd. were poor. It would be good to see the truck turning movements and sight lines in the plan. People speed on Banfield Rd., so this could be unsafe. Mr. Clark also requested more details on the monitoring wells and contamination on site. Mr. Graham responded that the current plan exceeded all sight distances on Banfield Rd. There has been contamination in the past. DES has been monitoring it for 10-12 years. Mr. Graham has hired Wilcox and Barton to manage any contamination issues through construction. They will ensure we are adhering to DES rules. The site will be developed in the most environmentally sensitive way. Mr. Clark questioned if they were filling in a manmade wetland. Mr. Graham confirmed it was manmade. Mr. Clark questioned if they had a plan for the invasive plants on the site. Mr. Graham responded that if there were invasive plants, then they would have no problem eliminating them in the proper way.

Chairman Legg questioned if they had a tenant for the building. Mr. Graham responded that they were working with a tenant but have signed an NDA. They would be doing light manufacturing and would be very clean. Chairman Legg noted that it would be good to understand the volume of traffic and types of trucks that would be on the site. Banfield Rd. is not designed for heavy usage of 18 wheelers. Mr. Graham responded that they are working with TAC and the DPW on some design considerations for Banfield Rd. and how to address increased truck traffic.

Vice Chairman Moreau commented that they may want to consider a barricade on the side of parking where there is a big grade change. Mr. Graham confirmed that they would look at that.

Mr. Pelech commented that they redesigned the entryway as a result of TAC feedback to create better sightlines. They are working closely with the City to work through the Banfield Rd. situation and come up with a compromise that will be satisfactory to the applicant and the City.

#### **IV. OTHER BUSINESS**

There was no other business.

#### **V. ADJOURNMENT**

Vice Chairman Moreau moved to adjourn the meeting at 7:54 p.m., seconded by Mr. Gamester. The motion passed unanimously.

Respectfully submitted,

Becky Frey,  
Acting Secretary for the Planning Board