

**PLANNING BOARD
PORTSMOUTH, NEW HAMPSHIRE**

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

7:00 PM

July 20, 2023

MINUTES

MEMBERS PRESENT: Rick Chellman, Chairman; Corey Clark, Vice Chair; Karen Conard, City Manager; Joseph Almeida, Facilities Manager; Beth Moreau, City Councilor; Members Greg Mahanna, Peter Harris, James Hewitt, and Jayne Begala

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ALSO PRESENT: Peter Stith, Principal Planner

MEMBERS ABSENT: Alternate Andrew Samonas

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REGULAR MEETING 7:00 pm

I. APPROVAL OF MINUTES

A. Approval of the **June 15, 2023** meeting minutes.

*The June 15 minutes were **approved** as amended by unanimous vote, 9-0.*

B. Approval of the **June 22, 2023** meeting minutes.

*The June 22 minutes were **approved** as presented by unanimous vote, 9-0.*

II. DETERMINATIONS OF COMPLETENESS

SUBDIVISION REVIEW

A. The request of **Murdock Living Trust (Owner), 15 Lafayette Road** requesting Preliminary and Final Subdivision Approval to subdivide one lot into two lots to create the following: Proposed Lot 1 to be 9,129 square feet of lot area and 73.8 feet of frontage and Proposed Lot 2 to be 8,172 square feet of lot area and 102 feet of frontage.

SITE PLAN REVIEW

Councilor Moreau moved to determine that the application is complete according to the Subdivision Review Regulations (contingent on the granting of any required waivers under

Sections IV of the agenda) and to accept the application for consideration. Vice-Chair Clark seconded. The motion passed by unanimous vote, 9-0.

- A. REQUEST TO POSTPONE** The application of **Banfield Realty, LLC (Owner)**, for property located at **375 Banfield Road** requesting Site Plan review approval to demolish two existing commercial buildings and an existing shed and construct a 75,000 s.f. industrial warehouse building with 75 parking spaces as well as associated paving, stormwater management, lighting, utilities and landscaping. **REQUEST TO POSTPONE**

Mr. Mahanna moved to postpone the petition, seconded by Vice-Chair Clark. The motion passed by unanimous vote, 9-0.

III. PUBLIC HEARINGS – NEW BUSINESS

- A.** The request of **CP Management Inc (Applicant)** and **Sarnia Properties INC, (Owner)**, for property located at **933 US Route 1 BYP** requesting a Conditional Use Permit in accordance with Section 10.1112.14 of the Zoning Ordinance to provide 83 parking spaces where 114 are required. Said property is located on Assessor Map 142 Lot 37 and lies within the Business (B) District. (LU-23-76)

SPEAKING TO THE APPLICATION

[Timestamp 5:00] Attorney Chris Mulligan was present on behalf of the applicant CJA Corporation aka Vanguard Key Club. He reviewed the petition. He noted that the site plan and parking calculation indicated that there are 82 spaces on the site but that 83 spaces were advertised. He discussed where they could fit two additional spaces. Chairman Chellman said the notice stated that Attorney Mulligan was representing CP Management and Sarnia. Attorney Mulligan replied that CP Management represents the landlord Sania and that his client would be a tenant of CP Management and that he had authorization on file from CP Management to represent CJA Corporation. Attorney Mulligan continued to review the application and said the application met all the criteria for a Conditional Use Permit.

[Timestamp 15:29] Mr. Mahanna asked if the future NH Motorcycle facility was the 2-story office space across the street. Attorney Mulligan said it was where Rexall used to be. Councilor Moreau remarked that Attorney Mulligan said the access point for the specific unit was only from that parking lot, but she said it looked like two sides of the parking lot weren't accessible from one to the other. She asked if any of the other units were accessible from the parking lot. Attorney Mulligan said he did not believe so. He said there were stairwells that ran from the lower parking area, so the lower and upper parking lots could be accessed, but there were no other facilities that accessed the building from the upper lot. Mr. Mahanna asked if the Board could ask for a one-year report back, and Attorney Mulligan agreed. Chairman Chellman asked if a need for overflow parking was anticipated, and Attorney Mulligan said was not. Ms. Begala asked what the average space allotment was for the other Vanguard Key Club sites. Attorney Mulligan said it would require cross-referencing but the full membership was expected to be ported over from Raynes Avenue. He said the historical information provided was from Raynes

Avenue but the demand would be for 933 Route One because the two facilities wouldn't be open at the same time. Mr. Harris asked how much smaller the Raynes Avenue lot was. Attorney Mulligan said that parking lot held 41 spaces and the new parking lot would be the same size.

Chairman Chellman opened the public hearing.

PUBLIC HEARING

No one spoke, and Chairman Chellman closed the public hearing.

DECISION OF THE BOARD

*Note: The original motion made was **amended** after further discussion [Timestamp 21:04]*

Vice-Chair Clark moved to find that the Conditional Use Permit application meets the criteria set forth in Section 10.1112.14 and to adopt the findings of fact as presented. Councilor Moreau seconded. The motion passed by unanimous vote, 9-0.

*Vice-Chair Clark moved to find that the number of off-street parking spaces provided will be adequate and appropriate for the proposed use of the property and to **grant** the conditional use permit with the following **conditions**:*

- 2.1) The applicant shall submit a written report to the Planning Department one year after opening evaluating the parking usage.*
- 2.2) The parking spaces as depicted on Sheet C-3 on the current loading dock area can be used for parking as necessary.*

*Councilor Moreau seconded. The motion **passed** by unanimous vote, 9-0.*

- B. REQUEST TO POSTPONE** The request of **Tanner Family Revocable Trust (Owner)**, for property located at **380 Greenleaf Avenue** requesting a Wetland Conditional Use Permit according to Section 10.1017 of the Zoning Ordinance for the construction of a new 20 x 20' one-story garage on a residential property with various additions of native buffer plantings and areas of storm water improvement to mitigate any impervious impacts from the garage. The proposal includes removal of 885 square feet of impervious asphalt, installation of 2' drip edge of crushed stone around the perimeter of the garage and 484 square feet of pervious pavers leading up to the garage where asphalt currently exists. Additional planting beds are proposed in areas of existing asphalt. Said property is located on Assessor Map 243 Lot 63 and lies within the Single Residence B (SRB) District. **REQUEST TO POSTPONE (LU-23-62)**

DECISION OF THE BOARD

Mr. Mahanna moved to postpone the petition to the August meeting, seconded by City Manager Conard. The motion passed by unanimous vote, 8-0, with Councilor Moreau recused.

- C. The request of **Murdock Living Trust (Owner), 15 Lafayette Road** requesting Preliminary and Final Subdivision Approval to subdivide one lot into two lots to create the following: Proposed Lot 1 to be 9,129 square feet of lot area and 73.8 feet of frontage and Proposed Lot 2 to be 8,172 square feet of lot area and 102 feet of frontage. Said property is located on Assessor Map 152 Lot 2 and lies within the General Residence A (GRA) and Historic Districts. (LU-23-26)

SPEAKING TO THE APPLICATION

[Timestamp 26:20] Ryan Fowler of James Verra and Associates was present on behalf of Trustee Jeff Murdock, who was also present. He said they proposed an additional lot subdivision, noting that the original house fronts on Lafayette Road and the new parcel will front on Orchard Street. He said the existing parcel was granted a variance because it lacked the minimal required amount of frontage. He said his client had no desire to develop the lot and planned to sell it. He said they met with TAC and agreed to add Notes 14 through 18 on the plan to let the new buyer know that the City required the items to be completed prior to issuing a building permit.

[Timestamp 28:18] Chairman Chellman asked if Note 15 had been corrected, and Mr. Fowler agreed. Mr. Almeida commented that it was a great opportunity to carve a lot out of a piece of property that was a unique situation.

Chairman Chellman opened the public hearing.

PUBLIC HEARING

No one spoke, and Chairman Chellman closed the public hearing.

DECISION OF THE BOARD

*Vice-Chair Clark moved to **grant** the requested waivers to the Subdivision Standards from Section VI General Requirements #5 Driveways, #6 Drainage Improvements, #7 Municipal Water Services, #8 Municipal Sewer Services, #9 Installation of Utilities and #14 Erosion and Sedimentation Controls, because strict conformity would pose an unnecessary hardship to the applicant and waiver would not be contrary to the spirit and intent of the regulations. Mr. Mahanna seconded. The motion passed by unanimous vote, 9-0.*

Vice-Chair Clark moved to find that the Subdivision (Lot Line Revision) application meets the standards and requirements set forth in the Subdivision Rules and Regulations to adopt the findings of fact as presented. Mr. Almeida seconded. The motion passed by unanimous vote, 9-0.

*Vice-Chair Clark moved to **grant** Preliminary and Final Subdivision Approval with the following conditions:*

- 2.1) The subdivision plan and any easement plans and deeds shall be recorded simultaneously at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.*
- 2.2) Property monuments shall be set as required by the Department of Public Works prior to the filing of the plat;*
- 2.3) GIS data shall be provided to the Department of Public Works in the form as required by the City;*
- 2.4) Prior to issuance of a building permit, owner shall obtain necessary permits or approvals from DPW to serve the site.*

Councilor Moreau seconded. The motion passed by unanimous vote, 9-0.

- D.** The request of **ADL 325 Little Harbor Road Trust (Owner)**, for property located at **325 Little Harbor Road** requesting a Wetland Conditional Use Permit according to Section 10.017 of the Zoning Ordinance for the replacement of the existing bridge with a timber pile bridge and removal of the existing causeway. The project proposes permanent impacts within the wetland buffer of 36,358 square feet and 3,443 square feet of permanent impacts within the tidal wetland. Said property is located on Assessor Map 205 Lot 2 and lies within the Rural (R) District. (LU-23-81)

SPEAKING TO THE APPLICATION

[Timestamp 32:06] Lead environmental scientist and certified NH wetlands scientist Jay Aube of TFMoran was present on behalf of the applicant and reviewed the petition and criteria.

[Timestamp 51:22] Councilor Moreau asked if wood piles were currently holding up the bridge. Mr. Aube said they were metal piles reinforced with different mechanisms. Councilor Moreau asked if there was an anticipated length of time that the new bridge would last. Mr. Aube said it would last beyond 2100. He said there were a lot of recreational folks who used the area, and the span would not decrease at all. Ms. Begala said the piles would be coated with acrylic and asked how the applicant would ensure that the construction materials would be clean and that organisms would not be added to the environment. Mr. Aube said they normally took materials from facilities that had clean fill, but in this instance they would utilize the existing material to return the site to its original grade. He said if anything, materials would be removed from the site. He said the piles would be wooden and there would be no opportunity to bring in any kind of invasive species but if one were to travel on a pile, it would be unlikely that it could survive the salt conditions. He said the Environmental Protection Agency (EPA) initially had concerns about the butternut oil but it was found that it wouldn't have any adverse impact. Ms. Begala said the bridge's height would be increased by about four feet and asked whether that required additional materials. Mr. Aube said additional material would be from reputable sources that have clean material. Ms. Begala said the concrete block remnants would sink into the mud sedimentation and asked why they wouldn't be removed. Mr. Aube said that some of those structures were so imbedded that they may not be able to be removed, so instead of spending time and resources to dig them up, they decided to cut them two feet below the grade of the mud

flat. He said by removing the tidal restrictions, the silt and sediment would gradually fill over the areas of the remaining concrete two feet below. He said he was confident that the bulk of the materials could be removed. Ms. Begala said there would be a visual impact by increasing the height of the ridge four feet and that more kayakers would be attracted to the area if the tidal restriction was reduced and the width of the channel area was kept. Mr. Aube said the construction would not impede access to kayakers from the northerly part of the island. He agreed that the bridge would be four feet higher but said it would look better. Chairman Chellman said the view of it would change but didn't think the Board had the criteria to judge the visual impacts. Ms. Begala asked how decreasing the tidal restriction would not change the retention of nutrients found in that area. Mr. Aube said they proposed the method prescribed by the 2019 NHDES wetland rules. He said they looked at all tidal restrictions in the seacoast area and now to decrease the hydraulic capacity and return systems to their natural ecological state. He said he was confident they had achieved that and would monitor it. Chairman Chellman asked if it was a restoration of the natural conditions and enhancement beyond what was there today. Mr. Aube agreed. Ms. Begala asked how increasing the hydraulic capacity would provide the same nutrients or more nutrients to support the living organisms in that area. Mr. Aube said they wanted vegetation to utilize the nutrients and absorb them and that they were increasing the likelihood of scouring occurring along the shoreline by increasing the hydraulic capacity and slowing down the water. He said increasing the vegetation on the shoreline with the salt marsh addition gave more opportunity to treat and handle stormwater and attenuate the nutrients. Mr. Hewitt asked what the bridge weight loading capacity was rated for and if it would handle all fire equipment. Mr. Aube said he didn't have the numbers but that it was being designed to accommodate all emergency vehicles at the local level and that the the Conservation Commission confirmed that it met that criteria.

Chairman Chellman opened the public hearing.

PUBLIC HEARING

No one spoke, and Chairman Chellman closed the public hearing.

DECISION OF THE BOARD

*Vice-Chair Clark moved to **grant** the Wetland Conditional Use permit with the following **conditions**:*

2.1) In accordance with Section 10.1018.40 of the Zoning Ordinance, applicant shall install permanent wetland boundary markers adjacent to the freshwater wetland areas during project construction. These can be purchased through the City of Portsmouth Planning and Sustainability Department.

2.2) Applicant shall provide a monitoring report detailing the success of the planting plan one year after project completion and demonstrate compliance with the NHDES monitoring requirements when complete.

- 2.3) *The Salicornia be relocated or added to the planting plan as additional plantings.*
- 2.4) *An independent wetland scientist that specializes in salt marsh restoration shall be hired to review the salt marsh restoration plan and provide comments back to the applicant.*
- 2.5) *The applicant shall research ways to reduce the disturbance to the local Nudibranch fish population.*

Councilor Moreau seconded. The motion passed by unanimous vote, 9-0.

- E. REQUEST TO POSTPONE** The application of **Banfield Realty, LLC (Owner)**, for property located at **375 Banfield Road** requesting Site Plan review approval to demolish two existing commercial buildings and an existing shed and construct a 75,000 s.f. industrial warehouse building with 75 parking spaces as well as associated paving, stormwater management, lighting, utilities and landscaping. Said property is shown on Assessor Map 266 Lot 7 and lies within the Industrial (I) District. **REQUEST TO POSTPONE (LU-20-259)**

DECISION OF THE BOARD

The petition was postponed to the August meeting.

IV. PRELIMINARY CONCEPTUAL CONSULTATION

- A. The request of Atlas Commons LLC (Owner)**, for property located at **581 Lafayette Road** requesting an addition to the existing commercial building for residential dwelling units with the associated site improvements. Said property is shown on Assessor Map 229 Lot 0229-008B and lies within the Gateway Corridor (G1) District. (LUPD-23-5)

[Timestamp 1:12:48] Project architect Tracy Kozak was present on behalf of the applicant to review the petition, along with owner Mark McNabb. Ms. Kozak said they proposed to build two apartment buildings and use the workforce housing incentive. She said there would also be a level of underground parking. She said there was a right-of-way easement across the back for neighboring properties. She reviewed the floor plans and said they met the required parking on site and that they also had a shared parking analysis. She said the apartments would range from studios to five bedrooms but most would be two bedrooms. She said they were also seeking variances for building length and coverage.

[Timestamp 1:23:05] Ms. Conard said several bedrooms didn't have windows. Ms. Kozak said the apartments on the second floor where the building butted up against the back of the existing building didn't have windows, but the corridor was on the outside and on top of that was glass for borrowed light. She said the apartments would also get borrowed light from the skylights and transoms. Ms. Begala asked what the range of living areas was for the different sized units. Ms. Kozak said the smallest units were 500 square feet and the largest apartment was 1,952 square feet. Ms. Begala asked if they would tower above the Winchester Apartments. Ms. Kozak said they were not right next to the Winchester Apartments, which were three stories. She said the applicant's buildings were four stories in the middle and three stories at the end. Ms. Begala

asked if there would be green space. Ms. Kozak said there were landscaped areas on the west and north sides of the building as well as a patio.

[Timestamp 1:27:05] Mr. McNabb addressed the Board and said he purposely kept the full 24-ft double travel lane behind the building on the side of the Winchester Apartments, so his building was pulled far away from that lot line. He discussed the Gateway District briefly and noted that the site was a sea of parking lot. He said the greenscape on the side of Ledgewood Drive would remain. On the front, he said there was a nice relief because that part of Route One was recently developed and benefited the parcel with modern amenities. He said the vast amount of parking was a waste of property, especially when additional housing was needed. He said smaller units were more helpful to get affordable rates.

[Timestamp 1:33:31] Councilor Moreau said the entrance closest to Lafayette Road was an entrance only and not an exit and she had seen many cars exit that entrance. She said it would be helpful to design it to keep people from doing that. She said she was part of the creation of the Gateway District and they were figuring out how they could incentivize things more. Mr. Mahanna asked if there was a percentage that would be allocated to workforce housing and if so, what would be asked for in exchange. Ms. Kozak said they would comply with the required minimum of 20 percent. She said the benefit was being allowed to have two buildings with 24 units each, and workforce housing allowed that to be increased to 36 units. Mr. Mahanna asked if there would be spaces for bike racks, scooters and bikes. Mr. McNabb agreed.

[Timestamp 1:36:55] Mr. Hewitt asked if the applicant would commit to the standard RSA in Portsmouth zoning, which was 20 percent, and that 20 percent would rent for 60 percent of AMI (area median income). Mr. McNabb said they would comply with the 20 percent and would also have pilot programs that included having the renter's employer pay the security deposit. Mr. Hewitt asked if the rest of the units would be market rate. Mr. McNabb said they would be market rate by definition but lower. Mr. Hewitt asked if it was realistic to propose 61 apartments and provide only 54 parking spaces. Ms. Kozak said a studio apartment required a half parking space, so she thought it was realistic because a lot of those renters didn't drive. Mr. Hewitt noted that the West End Yards had a lot of apartments that small and every tenant owned a car. He said the buildings would have to have between 102 and 116 spaces in Dover. Mr. McNabb said they complied with the parking requirement and pointed out that the parcel was unique. He said there was a cross agreement with Bowl-O-Rama that tenants could park on free spaces, so he thought the combination of the amount of parking in that area with the development's subterranean parking was sufficient. He said there were parking easements. Mr. Hewitt asked if the neighbors understood that the development would place a huge new demand for parking in that area. Chairman Chellman asked that it not be debated. He said Mr. McNabb might have data based on what his other tenants were doing in similar locations and with similar rent scales. He said if people used scooters, bikes, and transit, they would park less, and if there was a lot of parking provided, a need for more parking would be generated because it would attract people with cars. Mr. Hewitt asked if visitor parking was included in the applicant's calculations, and he noted that the property seemed to encroach to the west. Mr. McNabb said he would speak to the project engineer about it but he didn't believe that any of their parking was off their site.

[Timestamp 1:46:46] Ms. Begala said she thought there should be amenities for children on the site. Mr. McNabb said the development was near the high school fields. Chairman Chellman asked if the applicant wanted a Conditional Use Permit for parking. Mr. McNabb said he didn't because he believed they complied with the parking requirement. Chairman McNabb asked what was happening in the corner with all the dumpsters. Mr. McNabb said he would look into it and also the encroachment issue. Mr. Almeida asked if there were recreational spaces for children inside the buildings. Mr. McNabb said there were not but that he would look into it.

[Timestamp 1:51:35] Vice-Chair Clark said there was a lot of stormwater infrastructure on Ledgewood Drive that cut across the applicant's site and dove off into the Bowl-O-Rama site. He said he assumed that there would be a lot of roof drains tying in on the east and west sides of the buildings and asked if everything would go back into those existing stormwater systems or if the applicant proposed to slow things down on his site as far as retaining some of the volume and then discharging it. Mr. McNabb said he didn't think the project was far enough along on that issue but knew it was unlikely that they would increase anything because it was a paved site and all the paving went into the same system. Vice-Chair Clark asked if Mr. McNabb would have solar rooftops like his other buildings had. Mr. McNabb agreed and said he would also have charging stations for cars. He discussed the parking issue further.

V. OTHER BUSINESS

- A. The request of **230 Commerce Way, LLC** for property located at **230 Commerce Way** requesting a 1-year extension to the Amended Site Plan Approval and Wetland Conditional Use Permit originally granted on **July 21, 2022**. (LU- 22-14)

DISCUSSION AND DECISION OF THE BOARD

*Councilor Moreau moved to **grant** a one-year extension to the Planning Board Approval of the Site Plan and Wetland Conditional Use Permit to July 21, 2024. Ms. Conard seconded. The motion passed by unanimous vote, 9-0.*

B. Chairman updates and discussion items.

[Timestamp 1:56:36] Chairman Chellman referred to the utilities project for High Street/Haven Court and asked if it would help if the Board told the City Council whether they supported the proposed enhancements. Mr. Hewitt asked if the City had an obligation to make the property ADA compliant. Councilor Moreau said it was ADA compliant as long as there was a way for a handicapped person to get from point A to point B. Vice-Chair Clark said he would feel more comfortable proposing the concept as it was presented to the Board in the package. Ms. Begala said she wasn't clear about the design. Chairman Chellman said the concept was having a developer participate with private funds on public property, which was presented to the Board and was part of the record, and if it changed, it was up to the City Council or City Staff. Mr. Hewitt asked if it wasn't more preferred, as an urban planning project, that tourists and pedestrians would be directed on main street fronts to spend their money. Chairman Chellman said it would add enhancements to the downtown. Councilor Moreau said it would make the dark

and unsafe place a lighter and safer one. Mr. Almeida said there were a few precedents for private funds and agreed that the back side of High Street was in desperate need of improvement.

Vice-Chair Clark voted to conceptually support the High Street/Haven Court public/private improvements as were originally presented to the Planning Board during its review of the 1 Congress Street proposal, and to inform the Council of this support.

Mr. Mahanna seconded. The motion passed by unanimous vote, 9-0.

C. Planning Board Rules and Procedures.

Timestamp 2:04:01 Chairman Chellman said he and the City Attorney would meet on August 1 to discuss the Planning Board's rules and procedures and that he would present the results at the August Planning Board meeting.

D. Board discussion of Regulatory Amendments, Master Plan Scope & other matters.

[Timestamp 2:04:38] Chairman Chellman said he wanted to see the Master Plan process formally begin by having a subcommittee work on the Scope of Work. It was further discussed.

Mr. Mahanna moved to formally begin the Master Plan process per RSA 674:1. Mr. Almeida seconded the motion.

[Timestamp 2:06:07] There was further discussion.

The motion passed by unanimous vote, 9-0.

Mr. Stith said the Conservation Commission wanted a work session to discuss amendments to the Wetland ordinance and suggested that a date and time be chosen in the next few weeks.

VI. ADJOURNMENT

The meeting adjourned at 9:18 p.m.

Respectfully submitted,

Joann Breault
Secretary for the Planning Board