

**PLANNING BOARD  
PORTSMOUTH, NEW HAMPSHIRE**

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

**7:00 PM**

**September 21, 2023**

**MINUTES**

**MEMBERS PRESENT:** Rick Chellman, Chair; Corey Clark, Vice-Chair; Karen Conard, City Manager Joseph Almeida, Facilities Manager; Beth Moreau, City Councilor; Members Greg Mahanna; Peter Harris; James Hewitt, Andrew Samonas, Alternate; William Bowen, Alternate

**ALSO PRESENT:** Peter Stith, Principal Planner

**MEMBERS EXCUSED:** Jayne Begala

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Chair Chellman called the meeting to order at 7:00 p.m. He stated that Alternate Andrew Samonas would take a voting seat for the evening in place of excused member Jayne Begala.

Note: the timestamp denotes the video recording time.

**I. APPROVAL OF MINUTES**

- A. Approval of the August 17, 2023 meeting minutes.
- B. Approval of the August 30, 2023 Work Session minutes.

*Chair Chellman requested that the term "Chairman" used throughout both sets of minutes be changed to "Chair" to reflect Code Committee changes.*

*Councilor Moreau moved to approve The August 17 and August 30 minutes as amended, seconded by Vice-Chair Clark. The motion passed unanimously, 9-0.*

**II. DETERMINATIONS OF COMPLETENESS**

**SUBDIVISION REVIEW**

*Councilor Moreau moved to **postpone** all the 375 Banfield Road items to the October 19 meeting, seconded by Ms. Conard. The motion passed unanimously, 9-0.*

- A. REQUEST TO POSTPONE** The request of **Banfield Realty, LLC (Owner)**, for property located at **375 Banfield Road** requesting to Subdivide one lot into two lots to create the following: Proposed Lot 1 with 6.65 acres of lot area and 354 feet of street frontage and Proposed Lot 2 with 7.96 acres of lot area and 200 feet of street

frontage. Said property is shown on Assessor Map 266 Lot 7 and lies within the Industrial (I) District. **REQUEST TO POSTPONE**

**DECISION OF THE BOARD**

*The Board postponed the item to the October 19 meeting.*

- B.** The request of **Clyde C. Logue and Mary Duff Kastel (Owners)**, for property located at **27 Shaw Road** requesting Preliminary and Final Subdivision approval for a lot line relocation and subdivision as follows: Tax Map 223 Lot 18 decreasing from 34,205 square feet and 230 feet of frontage to 20, 1999 square feet and 129 feet of frontage; Map 223 Lot 18-1 decreasing from 23,149 square feet and 127 feet of frontage to 21, 241 square feet and 101 feet of frontage; and creation of a new lot with a lot area of 15,812 square feet and 100 feet of frontage. Said property is located on Assessor Map 223 Lot 18, 18-1 and lies within the Single Residence B (SRB) District. (LU-23-102)

**DECISION OF THE BOARD**

*Vice-Chair Clark moved to approve the Determination of Completeness, seconded by Councilor Moreau. The motion passed unanimously, 9-0.*

- C.** The request of **928 S. Street NH LLC (Owner)**, for property located at **928 South Street** requesting Preliminary and Final Subdivision approval for Lot Line Relocation as follows: Tax Map 221 Lot 88 increasing from 69,272 square feet and 165 feet of frontage to 102,228 square feet and 343 feet of frontage; Map 221 Lot 87 increasing from 505,739 square feet and 337 feet of frontage to 537,966 square feet and 120 feet of frontage; and Tax Map 221 Lot 90 decreasing in size from 284,452 square feet to 219,116 square feet with no change to street frontage. Said property is located on Assessor Map 221 Lots 87, 88, 90 and lies within the Single Residence B (SRB) District.

**DECISION OF THE BOARD**

*Vice-Chair Clark moved to approve the Determination of Completeness, seconded by Ms. Conard. The motion passed unanimously, 9-0.*

**SITE PLAN REVIEW**

- 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**

*The Board postponed the item to the October 19 meeting.*

- B.** The request of **JKM Realty LLC (Owner)**, for property located at **700 Peverly Hill Road** requesting Site Plan Review Approval for the construction of a 3,385 square foot addition to an existing commercial building with associated site improvements. Said property is located on Assessor Map 252 Lot 2-10 and lies within the Industrial (I) District. (LU-23-109)

*Mr. Samonas moved to vote to determine that Items A and B are complete according to the Site Plan Review Regulations (contingent on the granting of any required waivers under Sections III and/or IV of the agenda) and to accept the applications for consideration. Vice-Chair Clark seconded. The motion passed unanimously, 9-0.*

### **III. PUBLIC HEARINGS -- OLD BUSINESS**

- 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. Said property is shown on Assessor Map 266 Lot 7 and lies within the Industrial (I) District. **REQUEST TO POSTPONE** (LU-20-259)

*The Board postponed the item to the October 19 meeting.*

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

- A. REQUEST TO POSTPONE** The request of **Banfield Realty, LLC (Owner)**, for property located at **375 Banfield Road** requesting to Subdivide one lot into two lots to create the following: Proposed Lot 1 with 6.65 acres of lot area and 354 feet of street frontage and Proposed Lot 2 with 7.96 acres of lot area and 200 feet of street frontage. Said property is shown on Assessor Map 266 Lot 7 and 7-1 and lies within the Industrial (I) District. **REQUEST TO POSTPONE** (LU-23-107)

*The Board postponed the item to the October 19 meeting.*

- B. REQUEST TO POSTPONE** The application of **Banfield Realty, LLC (Owner)**, for property located at **375 Banfield Road** requesting a Wetland Conditional Use Permit according to Section 10.1017 of the Zoning Ordinance for 7,910 square feet of impact within the 100' wetland buffer for stormwater management in association with the proposed development. Said property is shown on Assessor Map 266 Lot 7 and lies within the Industrial (I) District. **REQUEST TO POSTPONE** (LU-20-259)

*The Board postponed the item to the October 19 meeting.*

- C. The request of **Jeffrey M. and Melissa Foy (Owners)**, for property located at **67 Ridges Court** will be heard at the **October 19, 2023** Planning Board meeting due to a noticing error. (LU-22-199)

*The petition will be heard at the October 19 meeting due to a noticing error.*

- D. The request of **JKM Realty LLC (Owner)**, for property located at **700 Peverly Hill Road** requesting Site Plan Review Approval for the construction of a 3,385 square foot addition to an existing commercial building with associated site improvements. Said property is located on Assessor Map 252 Lot 2-10 and lies within the Industrial (I) District. (LU-23-109)

### **SPEAKING TO THE APPLICATION**

[Timestamp 10:06] Project engineer John Chagnon representing the applicant was present via Zoom. He said the property would be known as 10 West Road in the future. He reviewed the site plan and the plans for drainage, utilities, and the easement. He said TAC approval was received subject to the condition that the easement be provided. He said the Planning Department Memorandum detailed six proposed conditions, which the applicant agreed with except for wanting to revise Condition 2.1 so that the site plan would be recorded before the building permit due to the time of the season and the desire to do construction. He asked that the final filing of the easement be put into a subsequent condition to be completed before the issuance of a building permit. He noted that Items 2.6 and 2.6 might need rewording because they would be part of the easement negotiations.

Vice-Chair Clark suggested adding language in the documents to address the management of invasive species during construction. Mr. Chagnon agreed and said it could be an additional condition of approval, Item 2.7. Mr. Samonas said he saw flooding in front of the house during an intensive rain period and asked which part of the drainage analysis would mitigate it. Mr. Chagnon said the occupied property sloped away from West Road and the area in the front would not change, and any additional work would be in the watershed at the rear of the lot. He said the flooding on Peverly Hill Road would need attention by the City.

Vice-Chair Clark asked for clarification on the request for the site plan to be recorded before the building permit. Mr. Chagnon said Condition 2.1 talked about any site plans and easements being recorded before the building permit. He said the project would not change the existing drainage condition. He said the Department of Public Works wanted to ensure an easement for City water coming onto the lot and that the applicant was willing to do that. He said the problem with having the condition being prior to the building permit was the timing, due to winter and because they wanted to start construction. He said the easement finalization procedure would involve the Legal Department reviewing a document submitted by the applicant and then it would go before the City Council for approval, which would add extensively to starting construction. Chair Chellman asked if the site plan would be okay to be recorded. Mr. Chagnon agreed and said he believed that the City Staff discussed it with the Legal Department.

Chair Chellman opened the public hearing.

## PUBLIC HEARING

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

## DECISION OF THE BOARD

*Vice-Chair Clark moved to vote to find that the Site Plan Application meets the requirements set forth in the Site Plan Regulations Section 2.9 Evaluation Criteria and adopt the findings of fact as presented. Councilor Moreau seconded.*

*Vice-Chair Clark moved to vote to grant Site Plan Approval with the following conditions:*

***Conditions to be satisfied subsequent to final approval of site plan but prior to the issuance of a building permit or the commencement of any site work or construction activity:***

- 2.1) *The site plan shall be recorded at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.*
- 2.2) *The applicant shall agree to pay for the services of an oversight engineer, to be selected by the City, to monitor the construction of improvements within the public rights-of-way and on site.*
- 2.3) *Any site development (new or redevelopment) resulting in 15,000 square feet or greater ground disturbance will require the submittal of a Land Use Development Tracking Form through the Pollutant Tracking and Accounting Program (PTAP) online portal. For more information visit <https://www.cityofportsmouth.com/publicworks/stormwater/ptap>*
- 2.4) *DPW will review and approve the locations of domestic and fire service lines entering all buildings.*
- 2.5) *Include language on the plan adhering to invasive species management.*

***Conditions to be satisfied subsequent to a building permit but prior to the issuance of a Certificate of Occupancy.***

- 2.6) *Provide a drainage and flow easement to the City to permit stormwater drainage through drain infrastructure to be constructed and maintained by the applicant. The applicant shall provide the City with the right, but not the obligation, to maintain drainage infrastructure at the applicant's expense.*
- 2.7) *Ownership and maintenance responsibility for drainage infrastructure to be detailed on plans and in easements.*
- 2.8) *Any easement plans and deeds shall be recorded at the Registry of Deeds by the City as deemed appropriate by the Planning Department.*

*The motion was seconded by Mr. Mahanna. The motion passed unanimously, 9-0.*

- E. The request of **Clyde C. Logue** and **Mary Duff Kastel (Owners)**, for property located at **27 Shaw Road** requesting Preliminary and Final Subdivision approval for a lot line relocation and subdivision as follows: Tax Map 223 Lot 18 decreasing from 34,205 square feet and 230 feet of frontage to 20, 1999 square feet and 129 feet of frontage; Map

223 Lot 18-1 decreasing from 23,149 square feet and 127 feet of frontage to 21, 241 square feet and 101 feet of frontage; and creation of a new lot with a lot area of 15,812 square feet and 100 feet of frontage. Said property is located on Assessor Map 223 Lot 18, 18-1 and lies within the Single Residence B (SRB) District. (LU-23-102)

### **SPEAKING TO THE APPLICATION**

[Timestamp 26:25] Project engineer Eric Weinberg was present on behalf of the applicant. He said they worked with the previous owner and the parcel was divided into two, and they also assisted with the stormwater management design. He noted that Shaw Road was a private way and the plan was recorded and signed at the Registry, but since that time, the Legal Department ruled that Shaw Road is now a public road, which was different from the previous subdivision. He said now the owners owned both parcels and wanted to subdivide. He reviewed what would be done to the lots and said they met all the zoning requirements regarding lot size, frontage and so on. He said TAC voted to recommend approval with five stipulations, which were addressed. He discussed the stormwater plan and drainage study and the concerns of the abutters and said he was confident that the project addressed them all adequately.

Mr. Hewitt said TAC asked for a lot of notes to be added to the plan related to drainage, and he asked the reason why a preliminary stormwater infrastructure wasn't designed on the proposed lot instead. Mr. Weinberg said that whatever he designed, someone else would build something or the house would be different, so he would rather not spend the applicant's money on designing a stormwater management plan that would not be implemented. Mr. Hewitt said he was concerned that if a house were built, the site couldn't handle the stormwater. Mr. Weinberg said it wasn't just looking an infiltration but also trying to mimic the predevelopment condition to treat the runoff by using rain gardens or subsurface detention to mitigate it. Mr. Hewitt asked if it was a common way to address a future design for a house. Mr. Weinberg agreed and said each lot requires a review of the stormwater management design. Chair Chellman asked what the design storm year was. Mr. Weinberg said the City regulations indicated that they had to match for the 50-year storm, but he said they also had to design for the smaller events.

Chair Chellman opened the public hearing.

### **PUBLIC HEARING**

#### **SPEAKING TO, FOR, OR AGAINST THE PETITION**

[Timestamp 37:59] Brian Nesty of 184 Walker Bungalow Road said he was the main abutter and that he had a letter given to him by David Witham of 238 Walker Bungalow Road, which he read to the Board. The letter stated the reasons why Mr. Witham opposed the project and why he felt it did not meet the intent and standards of the zoning.

[Timestamp 42:53] Brady Byrd of 184 Walker Bungalow Road said he also opposed the project. He said he and his husband Mr. Nesty were surrounded by the lot on all sides. He said the changes would impact the value of their property and the drainage would also be a major impact. He said he was also worried about sight lines and privacy if the buffer was removed.

Mr. Weinberg said he didn't agree with Mr. Witham's belief that the lot was contrived because they worked with the existing land and could have made the "thumb" up the back a rectangle but chose not to in order to give access from the higher or lower end. He said the narrow road would be a benefit to the community because people would have to drive slowly on it. He said the abutter had been living with someone else's buffer for a long time and that the applicant could build another structure up to that section and clear out that buffer if he wanted to.

No one else spoke, and Chair Chellman closed the public hearing.

## **DECISION OF THE BOARD**

### **Subdivision Waiver**

*Vice-Chair Clark moved to vote to grant Waiver A to the Subdivision Standards from Section IX.1 Improvements and Installation Bonds.*

- a) 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 unanimously, 9-0.*

### **Subdivision**

*Vice-Chair Clark moved to vote 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. Mahanna seconded the motion. The motion passed by a vote of 8-1, with Mr. Almeida voting in opposition to the motion.*

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

- 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) Stormwater management system for Lot 18-0-1 shall be approved by DPW prior to issuance of a building permit.*
- 2.5) Correct front setback notation on Shaw Road.*
- 2.6) Applicant may construct a privacy fence along the eastern property line of the new lot that conforms to zoning requirements.*

*Mr. Mahanna seconded. The motion passed by a vote of 8-1, with Mr. Almeida voting in opposition to the motion.*

- F. The request of **928 S. Street NH LLC (Owner)**, for property located at **928 South Street** requesting Preliminary and Final Subdivision approval for Lot Line Relocation as follows: Tax Map 221 Lot 88 increasing from 69,272 square feet and 165 feet of frontage to 102,228 square feet and 343 feet of frontage; Map 221 Lot 87 increasing from 505,739 square feet and 337 feet of frontage to 537,966 square feet and 120 feet of frontage; and Tax Map 221 Lot 90 decreasing in size from 284,452 square feet to 219,116 square feet with no change to street frontage. Said property is located on Assessor Map 221 Lots 87, 88, 90 and lies within the Single Residence B (SRB) District. (LU-23-144)

## **SPEAKING TO THE APPLICATION**

[Timestamp 1:02:20] Project engineer Eric Weinberg was present on behalf of the applicant, along with Patricia Ramsey, the owner of the Edgewood facility and two other entities. Mr. Weinberg reviewed the application, noting that all the entities used the lot lines but now they would be cleaned up as a condition of the sale and the Edgewood property would gain some land. He said the plan had an error in the title block identifying tax map 90 instead of tax map 221 that would have to be corrected. He said the waiver request came from the Legal Department but he didn't think waivers were needed because the application had no site improvement.

Chair Chellman asked if there was a path that the high school students used and if it would be formalized in the future. Mr. Weinberg said there was a path and that former staff members wanted to see that part of the land put into conservation and that the applicant might consider it.

Chair Chellman opened the public hearing.

## **PUBLIC HEARING**

### **SPEAKING TO, FOR, OR AGAINST THE PETITION**

Dexter Robblee of 2 Rand Ct said he approved the lot line adjustment. He asked if there could be a crosswalk to get to Rand Court safely, if the pear tree leaning over Rand Ct could be pruned, and if a few trees could be harvested so that he could make raised beds for the public schools.

## **DECISION OF THE BOARD**

### **Subdivision Waiver**

*Vice-Chair Clark moved to vote to grant **Waiver B** to the Subdivision Standards from Section IX. Improvements and Installation Bonds. Waiver B: Specific circumstances relative to the subdivision, or conditions of the land in such subdivision, indicate that the waiver will properly carry out the spirit and intent of the regulations. Mr. Mahanna seconded. The motion passed unanimously, 9-0.*

### **Subdivision**

*Vice-Chair Clark moved to vote 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. Mahanna seconded the motion. The motion passed unanimously, 9-0.*

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

- 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.*

*Mr. Mahanna seconded. The motion passed unanimously. 9-0.*

## **VIII. OTHER BUSINESS**

- A.** The request of **Richard P. Fusegni (Owner)**, for property located at **201 Kearsarge Way** requesting an additional six-month extension to the Subdivision approval, originally granted by the Planning Board on October 20, 2022. Said property is shown on Assessor Map 218 Lot 5 and lies within the Single Residence B (SRB) District. (LU-22-150)

The first six-month extension was granted by the Planning & Sustainability Director on April 18, 2023. A second extension may be granted by the Planning Board for a period not to exceed 18 months from the original approval date. The applicant is seeking another six months (18 months total) to finalize and record the subdivision. See Section III E of the Subdivision Regulations.

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

[Timestamp 1:13:22] Mr. Hewitt asked about the timing and it was further discussed.

*Vice-Chair Clark moved to vote to grant an additional six-month extension to the Planning Board Approval of the Subdivision. Councilor Moreau seconded. The motion passed unanimously, 9-0.*

- B.** The request of **Port Harbor Land LLC (Owner)**, for property located at **2 Russell Street** requesting an additional six-month extension to the Subdivision approval, originally granted on December 15, 2022; and 1-year extensions to the Site Plan approval, and Conditional Use Permit approvals originally granted on December 15, 2022. Said property is shown on Assessor Map 118 Lot 28, Map 124 Lot 12, Map 125 Lot 21, Map 119 Lot 4, and Map 119 Lot 1-1C and lies within the Character District 5 (CD5), North End Incentive Overlay District, Historic District, and the Downtown Overlay District. (LU-22-111)

The first six-month extension was granted by the Planning & Sustainability Director on May 12, 2023. A second extension may be granted by the Planning Board for a period not to exceed 18

months from the original approval date. The applicant is seeking another six months (18 months total) to finalize and record the subdivision. See Section III E of the Subdivision Regulations.

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

[Timestamp 1:16:13] Mr. Hewitt said the applicant was asking for the extension three months early and if granted, it would be a 15-month extension. Chair Chellman said it was a large project and that the Board would be granting the time limits requested and not the additional three months.

*Ms. Conard moved to vote to grant an additional six-month extension to the Planning Board Approval of the Subdivision and a one-year extension for the Site Plan Approval and two Conditional Use Permits granted on December 15, 2022. Mr. Harris seconded.*

*The motion passed by a vote of 8-1, with Mr. Hewitt voting in opposition to the motion.*

#### **C. Chair updates and discussion items**

There was no update.

#### **D. Planning Board Rules and Procedures**

Chair Chellman said the City Attorney requested that the discussion be postponed. Chair Chellman suggested that the Board schedule a workshop to review the rules and procedures on September 28 at 6 p.m.

#### **E. Board Discussion of Regulatory Amendments, Master Plan Scope, and Other Matters**

Chair Chellman said it involved a non-profit civic group engagement with students statewide. He said he would get the proposed scope for Request for Proposals for the next meeting.

### **IX. ADJOURNMENT**

The meeting adjourned at 8:24 p.m.

Respectfully submitted,

Joann Breault  
Secretary for the Planning Board