

**PLANNING BOARD
PORTSMOUTH, NEW HAMPSHIRE**

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

7:00 PM

January 18, 2024

MINUTES

MEMBERS PRESENT: Rick Chellman, Chairman; Greg Mahanna, Vice Chair; Joseph Almeida, Facilities Manager; Beth Moreau, City Councilor; Members James Hewitt, Paul Giuliano; Alternates Andrew Samonas and William Bowen

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ALSO PRESENT: Peter Stith, Planning Manager

MEMBERS ABSENT: Karen Conard, City Manager; Jayne Begala

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Chair Chellman called the meeting to order at 7:00 p.m. He stated that Mr. Samonas would take a voting seat for Ms. Begala, and Mr. Bowen would sit in for City Manager Karen Conard.

I. ELECTION OF OFFICERS

Mr. Mahanna moved to re-elect Rick Chellman as Chair, seconded by Mr. Bowen. The motion passed with all in favor.

Mr. Almeida moved to elect Greg Mahanna as Vice Chair, seconded by Mr. Samonas. The motion passed with all in favor.

II. APPROVAL OF MINUTES

A. Approval of the December 21, 2023 Meeting Minutes

Councilor Moreau moved to approve the minutes as submitted, seconded by Vice-Chair Mahanna. The motion passed with all in favor.

III. DETERMINATIONS OF COMPLETENESS

SITE PLAN REVIEW

- A.** The request of **Portsmouth Submarine Memorial Association (Owners)**, for property located at **569 Submarine Way** requesting Amended Site Plan Approval to construct an approximately 1,588 square foot addition attached to the existing visitor center building and associated site improvements. Said property is located on Assessor Map 209 Lot 87 and lies within the Single Residence B (SRB) District.

City Council Representative Moreau moved to accept the amended site plan as complete, seconded by Vice-Chair Mahanna. The motion passed with all in favor.

- B.** The request of **Prospect North 815 LLC (Owners)**, for property located at **815 Lafayette Road** requesting Site Plan Review Approval for the demolition of the existing building and tower along Sagamore Creek and the construction of three 4-story, 24-unit multi-family buildings (72 total units) with first floor parking. The project will include associated site improvements such as parking, pedestrian access, community space, utilities, stormwater management, lighting and landscaping. Said property is located on Assessor Map 245 Lots 3 & 4 and lies within the Gateway Corridor (G1) District.

Councilor Moreau moved that the Board determine that Item A is complete according to the Site Plan Review Regulations (contingent on the granting of any required waivers under Section IV of the agenda) and to accept the application for consideration. Vice-Chair Mahanna seconded. The motion passed with all in favor.

IV. PUBLIC HEARINGS – NEW BUSINESS

- A.** The request of **Portsmouth Submarine Memorial Association (Owners)**, for property located at **569 Submarine Way** requesting Amended Site Plan Approval to construct an approximately 1,588 square foot addition attached to the existing visitor center building and associated site improvements. Said property is located on Assessor Map 209 Lot 87 and lies within the Single Residence B (SRB) District. (LU-23-165)

SPEAKING TO THE PETITION

[Timestamp 6:20] The applicant’s representative John Chagnon was present to speak to the petition, along with the project team, and reviewed the amended site plan.

Mr. Samonas verified that the existing welcome center would not be demolished. Councilor Moreau asked if the two buildings would be connected, and Mr. Chagnon agreed. Chair Chellman asked if the applicant was amenable to the City Attorney’s proposed arrangement for the water line, and Mr. Chagnon agreed.

Chair Chellman opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

Vice-Chair Mahanna moved that the Board 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. The motion passed with all in favor.

*Vice-Chair Mahanna moved that the Board grant Amended Site Plan Approval with the following **conditions**:*

- 1. The applicant will provide documentation that it has issued and recorded a license authorizing the City to utilize its existing water line easement, the terms and conditions to be approved by the Planning and Sustainability Director.*

Councilor Moreau seconded. The motion passed with all in favor.

Councilor Moreau moved that the Board hear Items IV.B and C together and vote on them separately. Vice-Chair Mahanna seconded. The motion passed with all in favor.

- B.** The request of **Prospect North 815 LLC (Owners)**, for property located at **815 Lafayette Road** requesting Site Plan Review Approval for the demolition of the existing building and tower along Sagamore Creek and the construction of three 4-story, 24-unit multi-family buildings (72 total units) with first floor parking. The project will include associated site improvements such as parking, pedestrian access, community space, utilities, stormwater management, lighting and landscaping; and a Development Site Conditional Use Permit under Section 10.5B43.10. Said property is located on Assessor Map 245 Lot 3 & 4 and lies within the Gateway Corridor (G1) District. (LU-23-149)

SPEAKING TO THE PETITION

[Timestamp 12:45] Neil Hansen of Tighe and Bond was present on behalf of the applicant, along with the applicant Michael Brown, Patrick Crimmins of Tighe and Bond, and Attorney F. S. Bruton. Mr. Hansen reviewed the site plan, noting that about 11,700 sf of impervious surface would be removed from the buffer and the project would provide 121 parking spaces where 109 were required by the ordinance. He said all lighting would be mounted on the buildings and would face away from the creek. He reviewed the Site Conditional Use Permit and the Wetland Conditional Use Permit (Section IV.B) and explained how the project met the criteria for each.

[Timestamp 33:50] Vice-Chair Mahanna asked if there would be designated parking spaces for the public use for the greenway. Mr. Hansen said there would be no signed parking spaces but the spaces inside the buildings would be reserved for the residents and everything else would be fair game. Mr. Samonas asked if the entire parcel would remain one legal parcel. Mr. Hansen agreed and said they were not currently proposing any subdivision. In response to other questions from Mr. Samonas, Mr. Hansen said there would be no change to the upper northeast portion of the lot, the residents and public would be allowed to access any future connectivity of conservation or development space, and the lease would prohibit residents who had more than one car from parking in the guest spaces. Chair Chellman verified that the tower was on a separate triangular parcel. Mr. Hansen said both parcels were under common ownership and the applicant would use a portion of the small triangular lot for community space. Chair Chellman concluded that it was technically two parcels and the community space went over both.

[Timestamp 37:05] Vice-Chair Mahanna said he was at the property that day and saw a lot of transient traffic going from the path into the woods and that he didn't think people in the

community would want to go into that space. He said a recent applicant had a similar path and had proposed low-mounted, down-shining lights down along the path to enhance safety for the residents and public. Mr. Hansen said the owner felt that developing the front of the lot would help discourage some of that from happening and they intended to place hours on the community space so that it wasn't open after dark for public use. He noted that the Conservation Commission did not want light within the buffer. Mr. Hewitt asked why the owner was willing to pay extra for more parking than Portsmouth required. Mr. Hansen said there would be a leasing office that would need extra parking spaces for clients and there were also four handicapped spaces. He said the extra parking would also provide spaces for the public using the path and would be an enhancement to the site.

[Timestamp 40:08] Mr. Almeida asked how the applicant would satisfy the code requirements for lighting on the rear doors of the building if they couldn't have any light back there at all. Mr. Hansen said there would have to be security lighting, and any lighting necessary for building code requirements would be addressed during the building permit process. He also noted that there was a drop in elevation by the path. Vice-Chair Mahanna said the applicant could do dark sky-compliant lighting in that case. Chair Chellman asked if the owner would be willing to put the lighting on the community space path toward the building and not shine it on the salt marsh. Mr. Hansen said the owner didn't want people on that path in the dark but that the sidewalk at the back of the building was a different case and that the owner might be willing to do something there. Mr. Crimmins added that the community space trail would not be lit because it would not be used in the evenings but that the path closer to the buildings could be lit. Mr. Almeida asked how the King Tide affected the site, and Mr. Hansen said it was not affected. Mr. Bowen asked what the demographics of the people living there were, and Mr. Hansen said he didn't know.

[Timestamp 44:55] Mr. Samonas noted that the collision history of the site wasn't reported in the traffic analysis due to police staffing shortages, and he asked if it had been included after the application was submitted. Mr. Hansen said he didn't know. Mr. Samonas said the stretch with two single interactions could get hectic and suggested having a "Do Not Block Intersection" sign in front of the property's driveway. Mr. Hansen said the Department of Transportation controlled the roadway and did not recommend any lane reconfigurations and that no issues came up in the traffic analysis. Councilor Moreau said her concern was people trying to get out at night on those busy roads. She asked if the applicant considered a cut-through into the neighbor's parking lot. Mr. Hansen said it was discussed but the owner chose not to pursue it.

[Timestamp 47:40] The visibility of the buildings from south of Route One was discussed. Chair Chellman said it was an aesthetic concern from the gateway perspective. He said it would be a wall of white and suggested toning it down. Attorney Bruton noted that there was a breakup between the white elevations but that they would be happy to consider a darker tone. Mr. Almeida noted that the plan did not include mechanical rooftop units, etc. that would detract from the clean lines of the buildings, but he said the lot was large and met the requirements. Chair Chellman said darker earth tones would make a big difference. Mr. Samonas said the Green Energy statement alluded to a roof and asked if there was a roof deck. Mr. Hansen said there was not a roof deck and that the individual heating components were for utilities. Mr. Samonas suggested solar panels. Chair Chellman suggested a condition that the dedication of the

pathways would be made available if there was a future connection to the east. It was further discussed and Mr. Stith said it wasn't necessary. Mr. Giuliano noted that the application included the demolition of the existing building and tower. Mr. Hansen said the second tower on the site was removed but the existing big tower would remain. The issue of the buildings being in the tower's fall zone was discussed, and Chair Chellman suggested that it be looked into.

Chair Chellman opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

1) Councilor Moreau moved that the Board 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. Mr. Almeida seconded. The motion passed with all in favor.

2) Councilor Moreau moved that the Board 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, and any easement plans and deeds 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) Owner shall provide an access easement to the City for water valve access and leak detection. The easement shall be reviewed and approved by the Planning and Legal Departments prior to acceptance by the City Council.*
- 2.4) 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>*
- 2.5) The applicant shall work with the Planning Department to look into the fall zone of the tower to ensure the safety of the residents.*

Prior to the issuance of a Certificate of Occupancy or release of the bond:

- 2.6) *The Engineer of Record shall submit a written report (with photographs and engineer stamp) certifying that the stormwater infrastructure was constructed to the approved plans and specifications and will meet the design performance.*
- 2.7) *A stormwater inspection and maintenance report shall be completed annually and copies shall be submitted for review to the City's Stormwater Division/ Public Works Department.*

Mr. Almeida seconded. The motion passed with all in favor.

- 1) *Councilor Moreau moved that the Board find that the Conditional Use Permit application meets the criteria set forth in Section 10.5B43.10 and to adopt the findings of fact as presented. Mr. Almeida seconded. The motion passed with all in favor.*
- 2) *Councilor Moreau moved that the Board grant the conditional use permit for a Development Site subject to the requirements and conditions of site plan review approval. Mr. Almeida seconded. The motion passed with all in favor.*

C. The request of **Prospect North 815 LLC (Owners)**, for property located at **815 Lafayette Road** requesting a Wetland Conditional Use Permit under Section 10.1017.50 of the Zoning Ordinance for work within the 100 ft wetland buffer is limited to the removal of existing impervious surfaces, existing leach field and septic system, and the restoration and enhancement of these areas with native grasses, shrubs, and trees. Said property is located on Assessor Map 245 Lot 3 & 4 and lies within the Gateway Corridor (G1) District. (LU-23-149)

SPEAKING TO THE PETITION

Note: The application was combined and addressed with Section IV.B.

DECISION OF THE BOARD

- 1) *Councilor Moreau moved that the Board find that the Conditional Use Permit application meets the criteria set forth in Section 10.1017 and to adopt the findings of fact as presented. Mr. Almeida seconded. The motion passed with all in favor.*
- 2) *Councilor Moreau moved that the Board grant the Wetland Conditional Use permit with the following **conditions**:*
 - 2.1) *The applicant shall submit seasonal updates to the Planning & Sustainability Department once invasive species removal begins until plantings have gone in and the buffer is stabilized. One year after plantings, if at least an 80% success rate has not been reached, applicants will replant and report back to the Planning & Sustainability Department one year after planting is complete and each subsequent year until an 80% planting success rate has been achieved.*

- 2.2) *In accordance with Section 10.1018.40 of the Zoning Ordinance, the applicant shall install permanent wetland boundary markers during project construction. These can be purchased through the City of Portsmouth Planning and Sustainability Department.*
- 2.3) *The final alignment of the trail is subject to review and approval by the Planning and Sustainability Director and any subsequent modification will be subject to a site plan amendment.*
- 2.4) *Remove Note 9 on the proposed community space trail sign that limits use to Portsmouth residents only.*

Mr. Almeida seconded. The motion passed with all in favor.

D. The request of **HCA Health Services of New Hampshire DBA: Portsmouth Regional Hospital & C/O Ducharme McMillen & Associates (Owners)**, for property located at **333 Borthwick Avenue** requesting Amended Site Plan approval to amend the conditions of approval from July 21, 2022. Said property is located on Assessor Map 240 Lot 2-1 and lies within the Office Research (OR) District. (LU-22-35)

SPEAKING TO THE PETITION

[Timestamp 1:06:03] Matthew Hamby of Bowman Consulting was present on behalf of the applicant. He said they were before the Board in July for the radiation/oncology expansion, which had been completed and was ready for the Certificate of Occupancy. He said a condition of approval for the amended site plan was to dredge the wetlands but that it was not completed and was still under investigation and holding up the Certificate of Occupancy. He said the applicant wanted to amend the July 2022 condition of approval to dredge (Condition 2.8) and to establish a Condition 2.9 to begin a separate site agreement and a new bond. He said it was a long process and could not be done in the duration of construction at this point.

[Timestamp 1:07:47] Mr. Almeida said it seemed like a reasonable request. Mr. Bowen asked what the relation between the size of the bond and the potential cost of doing the dredging was. Mr. Hamby said the original bond was based on construction costs of the radiation/oncology project that was closed and typically would be 100 percent of the construction cost. He said he didn't know the exact cost of the new bond. Mr. Bowen asked if it would be a slight amount over the anticipated cost of doing the dredging, and Mr. Hamby said he thought so. Mr. Samonas asked for an estimated timeline. Mr. Hamby said he thought they could be finished by April 2025 but that they still had to apply for the State permitting.

[Timestamp 1:10:00] Vice-Chair Mahanna said the application indicated that someone erroneously figured that it was an add-on to the original dredge permit and then it was denied by DES. Mr. Hamby said they applied for the permit and were still trying to make a case as to why it could be a maintenance dredge. Vice-Chair Mahanna said the applicant could then either start over or do maintenance. He asked if it could be denied if they started over. Mr. Hamby said the precedent had been set already because it was dredged in 1988 and they were trying to recreate

what was done then. Chair Chellman asked if a Corps of Engineers permit was needed, and Mr. Hamby agreed. Chair Chellman asked if the reason the permit was needed was because the prior owners did not follow through with the maintenance. Mr. Hamby said all he knew was that it was last dredged in 1988. Chair Chellman said his concerns were due diligence and not holding up the opening of the facility. He suggested a December 2025 deadline for the permits. Mr. Hamby said Condition 29 for the site agreement and the bond would take some time to get reissued, and he asked that it not be a precursor for the Certificate of Occupancy being released for the current facility. It was further discussed and the applicant said they needed 30 days. Chair Chellman concluded that the applicant would execute a new site review agreement for the completion of the dredging work within the next 30 days, to be completed by December 2025. Mr. Hamby agreed. It was further discussed.

Chair Chellman opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

1) *Councilor Moreau moved that the Board vote to modify prior conditions of approval 2.6 and 2.8 from the letter of decision dated July 27, 2022 and add condition 2.9:*

2.6) Prior to the bond release and in conjunction with the new site review agreement in condition 2.9, the wetland area adjacent to the emergency area will be dredged from Borthwick to the oxygen tank area to restore free flowing drainage. This will be done in conjunction with an associated wetland enhancement along the edges of this same area.

2.8) Prior to the bond release, the Engineer of Record shall submit a written report (with photographs and engineer stamp) certifying that the stormwater infrastructure was constructed to the approved plans and specifications and will meet the design performance.

2.9) The applicant will execute a new site review agreement for the completion of the dredging work within the next 30 days, to be completed by December 2025. The new agreement will be secured by surety, in the same amount as the current bond.

Mr. Almeida seconded. The motion passed with all in favor.

V. CITY COUNCIL REFERRALS

A. Solar Panel Zoning Amendments

B. EV Charging Station Zoning Amendments

There was some discussion on solar panels and the EV charging stations [timestamp 1:21:36].

There was no action taken on the referrals. The Board will hold a work session on January 25, 2024 at 6 pm to discuss both referrals.

VI. OTHER BUSINESS

A. Chairman Updates and Discussion Items

[Timestamp 1:30:45] Chair Chellman said he made a few calls concerning Pease and talked with a member of the Rockingham Planning Commission, who suggested that the Board consider a \$10,000 or \$15,000 allocation of the budget for a consultant related to the Master Plan. Chair Chellman said he would continue to follow up.

B. Planning Board Rules and Procedures: The Planning Board will consider general amendments to the Planning Board Rules & Procedures.

Councilor Moreau moved that the Board adopt the Planning Board Rules & Procedures as amended, seconded by Vice-Chair Mahanna. The motion passed with all in favor.

Mr. Bowen noted that the NH State Law stated that duplexes were not part of a Planning Board's jurisdiction. Chair Chellman said City Attorney McCourt was researching it but that it was not a Planning Board rules issue.

C. Board Discussion of Regulatory Amendments, Master Plan Scope, and Other Matters

Chair Chellman said the Board needed to discuss modifying the Overlay District. Councilor Moreau said she brought it forward at the City Council meeting and that it was referred to the Planning Board's February meeting.

Mr. Bowen asked what the timeline for the Master Plan was. Chair Chellman said there would be a proposed RFP/RFQ for consultants and a timeline soon.

Mr. Hewitt said it might be his last meeting. He said it was a pleasure to work with everyone on the Board and to serve the City. Chair Chellman thanked Mr. Hewitt for his service.

VII. ADJOURNMENT

The meeting adjourned at 8:37 p.m.

Respectfully submitted,

Joann Breault
Secretary for the Planning Board