

**PLANNING BOARD  
PORTSMOUTH, NEW HAMPSHIRE**

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

**7:00 PM Public Hearings begin**

**April 25, 2024**

**MEMBERS PRESENT:** Rick Chellman, Chairman; Joseph Almeida, Facilities Manager;  
Beth Moreau, City Councilor; James Hewitt; Paul Giuliano;  
Andrew Samonas, Alternate; Bill Owen, Alternate

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

**MEMBERS ABSENT:** Greg Mahanna, Vice Chair; Karen Conard, City Manager

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Chair Chellman called the meeting to order at 7:00 p.m. Alternate Mr. Owen took a voting seat for the evening. Chair Chellman called for a motion to consider Items I.A and II.B together.

*Councilor Moreau moved to consider Items I.A and II.B together, seconded by Mr. Samonas. The motion **passed** with all in favor.*

*Councilor Moreau moved to postpone Items I.A, and II.B for 581 Lafayette Rd to the May 16 meeting, seconded by Mr. Samonas. The motion **passed** with all in favor.*

**I. DETERMINATIONS OF COMPLETENESS**

**SITE PLAN REVIEW**

- A. REQUEST TO POSTPONE** The request of **Atlas Commons LLC (Owner)**, for property located on **581 Lafayette Road** requesting Site Plan review approval for two 4-story additions to the existing building that will total 72 residential units with associated site improvements including lighting, utilities, landscaping, and stormwater treatment/management and a Conditional Use Permit from Section 10.5B72 for increased density, building height and footprint. Said property is located on Assessor Map 229 Lot 8B and lies within the Gateway Corridor (G1) District. **REQUEST TO POSTPONE**

**DECISION OF THE BOARD**

*The site plan review was **postponed** to the May 16 meeting.*

## II. PUBLIC HEARINGS – NEW BUSINESS

- A. The request of **ZJBV Properties LLC (Owner)**, for property located at **180 Islington Street** requesting a Conditional Use Permit in accordance with Section 10.1112.14 of the Zoning Ordinance to provide two preexisting nonconforming parking spaces where 9 are required. Said property is located on Assessor Map 137 Lot 19 and lies within the Character District 4-L2 (CD4-L2) and Historic Districts. (LU-24-27)

### SPEAKING TO THE PETITION

[Timestamp 7:30] Attorney Chris Mulligan was present on behalf of the applicant, with project engineer Eric Weinrieb and applicant/owner Zeke Blumenfeld. Attorney Mulligan said Mr. Blumenfeld wanted to operate a retail antiques dealership on the first floor and a Conditional Use Permit was necessary for parking. He said the employees would use public parking and that most customers would walk to the store. He said they would provide alternative parking by installing a bike rack in front of the building and placing signage to reserve a portion of the front of the building for scooters and mopeds. He said the project met all the Conditional Use Permit requirements and the number of off-street parking spaces required were enough for the use.

[Timestamp 15:00] Mr. Bowen noted that the applicant's basic premise was that there was ample nearby public parking for the use. Mr. Bowen said the neighborhood parking would be different in the near future due to how the north end was evolving and the area's demographics. He said he didn't think customers would ride bikes to the antiques market. He said it would be helpful to have an update on the north end from the time the Foundry Garage was built as to the implications for a walkable neighborhood and for parking. Chair Chellman said there were two issues, and the bigger issue was the neighborhood parking demand. Attorney Mulligan said the provision of bike racks did not necessarily correlate to the customers for the particular use that triggered the project. He said the zoning ordinance required provisions for a certain number of parking spaces for all the building's uses. He said there was no space on the property to add more parking but they could do alternatives to mitigate the lack of parking for the other uses and that some of the property's other users might utilize those alternatives. Mr. Weinrieb said they prepared the parking demand analysis from a common-sense viewpoint that fell in line with the zoning. He said the antiques store would likely have only one or two customers at a time and that the customers might come by bike or scooter to shop and buy an item and then return with a larger vehicle to pick it up. He said there was also public parking and a COAST bus route stop.

[Timestamp 21:38] Councilor Moreau said she knew that the Foundry Garage alleviated some parking issues and would be a logical place for the antiques store's employees to park in. She said once the Islington Street Corridor streetscape was finished, people would walk up and down it or ride bikes or scooters. She noted that there was a parking space in front of the store and that the two busy establishments across the street didn't seem to have parking issues. Mr. Giuliano asked the applicant if he offered delivery. Mr. Blumenfeld said he did, depending on the item. Mr. Almeida said the project made sense and was an opportunity to support small businesses in the downtown core and to also support a housing unit that was below the luxury rate. He said the

documentation showed vehicles parking in the requested location and proved that two cars would fit in that space. Mr. Samonas noted that the corridor improvement project was happening right in front of the unit. Councilor Moreau said the improvements would stop at Brewster Street. It was further discussed. Chair Chellman verified that the request was for two existing tandem residential spaces on the right-hand side of the building and that the undersized area to the left of the building was not being proposed for vehicle parking.

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) Mr. Giuliano moved that the Board find that the Conditional Use Permit Application meets the requirements set forth in Section 10.1112.14 of the Ordinance and adopt the findings of fact as presented. Mr. Almeida seconded. The motion **passed** with all in favor.*

*2.) Mr. Giuliano moved that the Board grant the Conditional Use Permit with the following condition:*

*2.1) Parking in front of the building shall be designated for moped/motorcycle parking with appropriate signage.*

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

**B. REQUEST TO POSTPONE** The request of **Atlas Commons LLC (Owner)**, for property located on **581 Lafayette Road** requesting Site Plan review approval for two 4-story additions to the existing building that will total 72 residential units with associated site improvements including lighting, utilities, landscaping, and stormwater treatment/management and a Conditional Use Permit from Section 10.5B72 for increased density, building height and footprint. Said property is located on Assessor Map 229 Lot 8B and lies within the Gateway Corridor (G1) District.  
**REQUEST TO POSTPONE (LU-23-189)**

### **DECISION OF THE BOARD**

*The public hearing was **postponed** to the May 16 meeting.*

**C.** The request of **Edward R. Reynolds (Owner)**, for property located on **110 Aldrich Road** requesting a Wetland Conditional Use Permit in accordance with Section 10.1017 for the construction of a 768 s.f. detached, two car garage with an accessory dwelling unit on the second floor. Approximately 522 s.f. will be impacting the 100 ft wetland buffer as a permanent impervious impact, with the edge of the proposed garage located approximately 76 ft from the wetland resource and a Conditional Use permit to construct a Detached Accessory Dwelling unit in accordance with Section

10.814.62. Said property is located on Assessor Map 153 Lot 3 and lies within the Single Residence B (SRB) District. (LU-23-174)

### **SPEAKING TO THE PETITION**

[Timestamp 30:50] The applicant Edward Raynolds was present via Zoom and said he wanted to build a two-car garage with an ADU above it. He said half his lot was within the 100-ft wetland buffer zone and that he got approval from the Conservation Commission. He said the garage's design would reflect his home's architectural features. He said he needed relief for the percentage of roof area taken up by the dormers and from the two-car double-wide garage door as opposed to a single-width garage door. He said he would change his asphalt driveway to pavers and would use a plastic grid system for the two-car garage driveway.

[Timestamp 37:03] Councilor Moreau asked if the door on the back side of the new structure was a garage door. Mr. Raynolds agreed and said it was to get lawn and recreation equipment in and out but there would be no vehicles. Mr. Almeida said the relief requested was mostly architectural. Mr. Hewitt said the agenda showed that the applicant was only requesting a Conditional Use Permit for the wetland impacts and not architectural things like the garage doors and the dormers. Mr. Raynolds said he needed a Conditional Use Permit for the wetland impact, and the ADU required a Conditional Use Permit from the Planning Board and that he was only asking relief for the garage doors and dormers. Mr. Stith said the Planning Board could grant modifications from the requirements in the ordinance through the Conditional Use Permit process and that they did not need to be noticed. Mr. Hewitt asked why there were eight parking spaces for the ADU. Mr. Raynolds said his existing driveway could have 4-5 stacked cars and the two-car garage would fit two cars and the driveway would fit two cars.

Chair Chellman opened the public hearing.

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

Ellen Fineberg of 75 Aldrich Road said the applicant had a large vehicle that he was thinking of parking in his garage and if he did, he may have to park all the other cars in the driveway and use the street. Mr. Raynolds said Ms. Fineberg was referring to his van and trailer combination that he used for his bicycle touring business. He said he conducted tours all over the country and had two 15-passenger vans and two 15-ft utility trailers that returned to Portsmouth at the end of October and were put in private storage facilities. He said part of his new garage would house his trailers and the vans would be stored elsewhere.

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

### **DECISION OF THE BOARD**

*Councilor Moreau moved that the Board find that the Conditional Use Permit Application meets the requirements set forth in Section 10.1017.50 of the Ordinance and adopt the findings of fact as presented. Mr. Samonas seconded. The motion **passed** with all in favor.*

2) Councilor Moreau moved that the Board grant the Conditional Use Permit with the following conditions:

2.1) In accordance with Section 10.1018.40 of the Zoning Ordinance, applicant shall permanently install wetland boundary markers, which may be purchased through the City of Portsmouth Planning & Sustainability Department. Markers are to be placed along the 25' vegetative buffer at 50-foot intervals and must be installed prior to the start of any construction.

2.2) Applicant shall remove all debris/trash from the wetland and 25' vegetative buffer, including the wood decking/pallet structure.

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 requirements set forth in Section 10.814.62 of the Ordinance 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 the following modifications:

2.1) Modification from Section 10.814.53 to allow a 16' wide garage door.

2.2) Modification from Section 10.814.436 to allow a roof dormer to occupy 57% of the roof plan where 33% is the maximum.

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

3) Councilor Moreau moved that the Board grant the Conditional Use Permit with the following conditions:

3.1) Documentation of the conditional use permit approval shall be recorded at the Rockingham County Registry of Deeds, together with an affidavit that either the principal dwelling unit or the accessory dwelling unit will be occupied by the owner of the dwelling as the owner's principal place of residence, as required by Section 10.814.22.

3.2) A certificate of use issued by the Planning Department is required to verify compliance with the standards of this Section, including the owner occupancy and principal residency requirements. Said certificate shall be issued by the Planning Department upon issuance of a certificate of occupancy by the Inspection Department. A certificate of use shall not be issued prior to recording of documentation as required by this Ordinance.

3.3) The certificate of use shall be renewed annually upon submission of such documentation as the Planning Department may require to verify continued compliance with the standards of this Section. Failure to comply with this requirement shall be deemed a violation of the ordinance and may be enforced as provided in Article 2.

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

- D.** Consider amendments to change the definition of a home occupation found in Chapter 10, Article 15 Definitions, pursuant to Section 10.150 of the Zoning Ordinance.

[Timestamp 55:50] Chair Chellman said he talked to City Staff and they thought it made sense to include a modification to Home Occupation No. 2. He suggested leaving Home Occupation 1 as presented and allowing up to 5 or 6 students for Home Occupation 2. He said it would change the existing special exception requirement to a Conditional Use Permit that would come before the Planning Board and allow a greater number of students taking art or music lessons. He said it was in keeping with the goals of the master plan and land use committee discussions. He said there were concerns that Home Occupation 1 may not be enough. Councilor Moreau said the addition could probably get support from the City Council and that she had no issues adding the change. It was further discussed. Mr. Hewitt asked if Home Occupation 2 would expand to have more home occupation uses like yoga or hairdressing. Mr. Stith said it allowed no more than two people at any time, and a home occupation had to meet certain criteria. He used the example of a hair salon and said in Home Occupation 1, it could only be within 300 sf and only have two clients at a time. He said Home Occupation 2 would have up to 5 or 6 clients allowed by a Conditional Use Permit where it currently was allowed by special exception. Chair Chellman said Home Occupation 1 was allowed as a matter of right, but Home Occupation 2 would be something more. By having a Conditional Use Permit, he said the applicant would have to show how the particular use in the particular neighborhood worked.

Chair Chellman opened the public hearing.

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

Karen Rosania of 32 Boss Avenue said she was a local artist and a member of the Arts and Cultural Commission and was in support of changing the definition of home occupation to allow artists to teach small classes in their home studios. She said she also sent a letter to the Board signed by 17 other individuals who were part of the Portsmouth Arts Nonprofit Committee and/or the Arts and Cultural Commission and were in favor of the change. She said survey respondents to the Cultural Plans wanted fewer zoning barriers for artists and more work/living spaces for in-home instruction of music, visual arts, and other educational programs. She said it would allow Portsmouth to better attract and retain artists.

Jeffrey Cooper of Park Street said he was a local artist and agreed with Ms. Rosania.

Julia Higgins of 344 Aldrich Street said she was an educator and in support of changing the definition of Home Occupations 1 and 2.

Petra Huda of 280 South Street said she questioned the process because the Board wanted input from the public but the public was not aware of the second amendment.

Anna Stratton said she was the Executive Director of the Portsmouth Historical Society and was on the Arts and Cultural Commission and that her organization's work depended on the local

artists and featuring them in exhibitions. She said finding a way to have artists host classes in their homes was a wonderful addition and she supported the change.

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

## **DISCUSSION OF THE BOARD**

[Timestamp 1:13:08] Chair Chellman explained how the process worked and said there was nothing sneaky going on. He said they could make the language specific to be 5 or 6 students. He asked for opinions on Condition 1. Mr. Bowen said there could also be musical artists, so a provision was needed to protect neighbors from noise pollution. Chair Chellman said the City had a noise ordinance and he thought it was covered, especially under a Conditional Use Permit. Mr. Bowen asked if those 'by right' would be handled under the City's noise ordinance. Chair Chellman said there was a noise ordinance and a nuisance ordinance, and a nuisance would be a separate matter, and he thought it was covered, especially under the 'by right' term. Mr. Almeida said he was in full support of the 'by right' effort but asked how the Board would defend themselves against someone renting an apartment or duplex. He said he was concerned about creating conflicts in buildings where a landlord may not want groups of people coming into the building. Councilor Moreau said the landlord would have the power. Chair Chellman said that, unlike an ADU, there was no ownership requirement for home occupation. It was further discussed. Mr. Giuliano said he was concerned about what would come before the Board in the future, like friends going to a house to play drums or make chainsaw art. He asked if the Board would see people come forward for a Conditional Use Permit for six students and if the Board would have to ask them what they were teaching, and how the Board would base their decision. Chair Chellman said that might happen randomly and that the purpose of a Conditional Use Permit was a home occupation with up to six regular students. He said it could be three times a week for a few hours. Mr. Giuliano asked about dog grooming. Mr. Stith read the definitions of Home Occupation 1 and 2 and said people had to follow those criteria. Chair Chellman said it was about the neighborhood character and that Home Occupation 1 would allow no more than two students and Home Occupation 2 would allow up to six. He said the Board could say six students or six people. Councilor Moreau said the Board should stick to the word 'client' because it was a paying customer at that point. Mr. Samonas said it was discretionary based on the character of the neighborhood, the occupation, and the preexisting conditions to that occupation and that there were several governing parameters. He said it all sounded fine to him and noted that at the very least it would be a self-policing policy that the neighbors would do. There was further discussion and it was decided that Condition 1 would be the same language but would say 'up to six'.

## **DECISION OF THE BOARD**

### **Planning Department Recommendation**

*1) Councilor Moreau moved that the Board recommend to City Council to hold first reading on the zoning amendments for home occupation as follows:*

Proposed language shown in red.

### Home Occupation

An **office** or other **use** customarily conducted as an **accessory use** to a **dwelling**, complying with all the following standards:

- (a) Conducted entirely within a **dwelling** or an existing **accessory building**, and with no change to the character of the **dwelling** or **accessory building**;
- (b) Maximum floor area of 300 square feet;
- (c) No **outdoor storage** of materials or products;
- (d) Outdoor parking of no more than one vehicle related to the **home occupation**;
- (e) No deliveries by vehicles with more than two axles.

#### Home Occupation 1

A **home occupation** with no nonresident employees; no **sign** related to the business; no **more than 2** client, vendor or general public visitations **at one time**; and no deliveries other than by regular postal service and no more than one package delivery service truck (e.g., FedEx, UPS, etc.) per day.

#### Home Occupation 2

A **home occupation** with not more than one nonresident employee **and not more than 6 client, vendor or general public visitations at one time**.

Change Home Occupation 2 to a Conditional Use Permit where it currently requires a Special Exception.

*Mr. Giuliano seconded. The motion passed by a vote of 6-1, with Mr. Bowen voting in opposition.*

### III. CITY COUNCIL REFERRALS

#### A. Home Occupation (see above notice)

#### B. Solar Amendments

[Timestamp 1:33:32] Chair Chellman referred to the last clause under the definition ‘not visible from a public way’ and said the clause at the end that said “or a place to which the public has a right to access” should be deleted and that the City Attorney and HDC Chair Reagan Rudig had agreed with him. Mr. Almeida said he would hesitate changing anything that the Historic District Commission (HDC) had not weighed in on as a group. Chair Chellman said the issue was that people could see a lot more from roofs than walking around and that it would not change the substance of what the HDC had with it. It was further discussed. Mr. Almeida said he was concerned that the Board was simply making a recommendation forward and that the City Council might follow the recommendation, noting that there was still talk about taking responsibility for solar panels away from the HDC. Chair Chellman said he asked the City Council for more time to address it and that the proposal was to move it to a Planning Board public hearing. He said the City Council would consider it at their first reading on May 6 and that the Planning Board would get feedback from that. Councilor Moreau offered to put the change as a review under her name at the City Council meeting so that it was there at first reading on May 6, and the Board agreed.

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

##### **A. Chairman Updates and Discussion Items**

[Timestamp 1:46:35] Chair Chellman said he and Mr. Samonas spoke to a few master plan consulting firms and would have a list of consultants for the RFQ at the June or July meeting. Mr. Bowen asked about the inclusionary zoning ordinance. Chair Chellman said there would be drafts proposed to make changes to the Gateway and elsewhere, and it was further discussed.

#### **V. ADJOURNMENT**

The meeting adjourned at 8:47 p.m.

Respectfully submitted,

Joann Breault  
Planning Board Recording Secretary