

**PLANNING BOARD
PORTSMOUTH, NEW HAMPSHIRE**

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

7:00 PM Public Hearings begin

October 17, 2024

MEMBERS PRESENT: Rick Chellman, Chairman; Karen Conard, City Manager; Joseph Almeida, Facilities Manager; Beth Moreau, City Councilor; James Hewitt; Paul Giuliano; Andrew Samonas; Anthony Coviello; and William Bowen, Alternate

ALSO PRESENT: Peter Stith, Planning Department Manager

MEMBERS EXCUSED: Greg Mahanna, Vice Chair

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Chair Chellman called the meeting to order at 7:00 p.m. Alternate William Bowen took a voting seat for Vice-Chair Mahanna, who was absent.

Note: Some of the agenda items were not reviewed in order. The timestamps indicate when the items were addressed.

I. APPROVAL OF MINUTES

A. Approval of the **September 19, 2024** Meeting Minutes.

*Councilor Moreau moved to **approve** the September 19 minutes as submitted, seconded by Mr. Coviello. The motion passed with all in favor, with Mr. Giuliano abstaining.*

Mr. Almeida moved to hear the Presentation from Portsmouth High School Student ACE (Architecture, Construction, Engineering) Mentorship Club (Section VI, Other Business) out of the agenda's order. Ms. Conard seconded. The motion passed with all in favor.

Ms. Conard then moved to recommend that the Board do the zoning hearing at the end of the meeting, seconded by Mr. Almeida. The motion passed with all in favor.

II. DETERMINATION OF COMPLETENESS - SITE PLAN REVIEW

A. The request of **HPII Boston Portsmouth LLC (Owner), Hammes Realty Services, LLC (Applicant)**, for property located at **1900 Lafayette Road** requesting amended site plan for the addition of a new parking area with associated site improvements including storm water, landscaping and lighting. Said property is located on Assessor Map 267 Lot 8 and lies within the Gateway Corridor (G1) District. (LU-24-148)

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. Ms. Conard seconded. The motion passed with all in favor.

III. PUBLIC HEARINGS -- OLD BUSINESS

- A. POSTPONED TO JANUARY 2025** The request of **Matt Ball and Andrea Fershtam (Owners)**, for property located at **252 Wibird Street** requesting a Conditional Use Permit from Section 10.814 for the conversion of an existing accessory structure into a Detached Accessory Dwelling Unit (DADU) that does not conform with the dimensional requirements of the Ordinance. Said property is located on Assessor Map 149 Lot 12 and lies within the General Residence A (GRA) District. **POSTPONED TO JANUARY 2025 (LU-24-137)**

DECISION OF THE BOARD

*The Board previously **postponed** the item to the January 2025 meeting.*

IV. PUBLIC HEARINGS – NEW BUSINESS

- A.** The request of **HPII Boston Portsmouth LLC (Owner), Hammes Realty Services, LLC (Applicant)**, for property located at **1900 Lafayette Road** requesting amended site plan for the addition of a new parking area with associated site improvements including storm water, landscaping and lighting. Said property is located on Assessor Map 267 Lot 8 and lies within the Gateway Corridor (G1) District. (LU-24-148)

SPEAKING TO THE PETITION

[Timestamp 32:34] John McTigue of TFMoran was present on behalf of the applicant and said they wanted to add 22 parking spaces. He said four parking spaces would be lost because they would shift the dumpster over. He said there would be no additional work or office space, traffic, or utilities and they would put an underground stormwater system to tie into the existing one. He said 156 parking spaces were necessary to meet the number of employees and daily patients.

[Timestamp 34:47] Councilor Moreau asked if the dumpster enclosure would also be shifted over. Mr. McTigue agreed and said it would also be surrounded by new landscaping. Chair Chellman asked if it was the maximum spaces without the Conditional User Permit, and Mr. McTigue agreed. Mr. Almeida asked about the landscaping lighting. Mr. McTigue said they were proposing an additional light in the parking area.

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

Amended Site Plan Review

- 1) *Mr. Giuliano 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) *Mr. Giuliano moved that the Board grant Amended Site Plan Approval, seconded by Mr. Almeida. The motion passed with all in favor.*

B. Proposed Ordinance Amending Chapter 10, Article 6 - Overlay Districts, Section 10.680 – Gateway Neighborhood Overlay District, by Establishing a New Incentive Overlay District Allowing for Higher Density Housing. Affected parcels are listed on Assessor Map/Lot:

- 0213-0001-0000**
- 0213-0002-0000**
- 0213-0011-0000**
- 0213-0012-0000**
- 0214-0003-0000** *(portion of)*
- 0216-0001-0001**
- 0216-0001-0002**
- 0216-0001-0004**
- 0216-0001-0005**
- 0216-0001-0008**
- 0216-0001-0009**
- 0216-0001-0010**
- 0216-0001-0011**
- 0216-0001-008A**
- 0217-0002-1819**
- 0217-0002-1975**

SPEAKING TO THE PROPOSAL

[Timestamp 54:54] Mr. Stith gave a presentation on the draft Gateway Neighborhood Overlay District (GNOD).

[Timestamp 1:2:44] Mr. Coviello asked if the right-of-way would be handed over to the City or a road on the development. Mr. Stith read the clause and said if the building is taller than 35 feet with a right-of-way of 60 feet or less, the building shall be set back or stepped back from the right-of-way in accordance with the figure. He said it would imply a public street, not a driveway. He said the clause was excluded, so it would not apply to the GNOD. Mr. Giuliano asked Mr. Stith to elaborate on the payment in lieu of the workforce housing and what the calculation would be and how the money would be used. Mr. Stith said there currently was no formula or calculation and that the ordinance proposed that it be established by the Fee

Committee. He said they looked at other localities that ranged from \$35,00 to \$100,000 per unit, but that fee had not been set yet. He said that it ideally would be per unit or a combination of units. Mr. Bowen referred to the City Council's approval on the land transfer and asked what engagement the Planning had in that process. Chair Chellman said the Board would make a recommendation and then the City Council would make a decision.

Chair Chellman opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PROPOSAL

First Round Speakers

[Timestamp 1:07:45] Elizabeth Bratter of 159 McDonough Street presented two charts to the Board, one of which was a comparison of the National Standards of Office Research vs. the GNOD and the three different incentives that could be used. The other chart was a list of uses for Office Research vs. additional unbridled uses in GNOD. She explained how the GNOD could be used without employing any of the incentives and without negative impacts to the neighbors.

Second Round Speakers

[Timestamp 1:11:17] Elizabeth Bratter spoke again. She said the overlay was a great idea but there were concerns about how many members of the Planning Board helped write it and would be voting for something they developed. She reviewed the details of GNOD and important aspects for neighbors that she thought had not been considered. One of the points she raised was about the overlay lots going over open lands and wetlands and how much fill would be put in and if it could handle 80-ft structures. She suggested that the conversion of the two residential properties be allowed, with no increase in footprint, and any changes beyond what existed should require one of the three incentives. She asked the Board not allow GNOD with no required use of incentives.

Third Round Speakers

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

DISCUSSION OF THE BOARD

[Timestamp 1:14:32] Mr. Hewitt referred to the Shiller properties and said there was no Waterfront Industrial zoning. He asked if the previous power plant and three boilers were all shut down. Ms. Conard said she thought there was some peak power at one of the buildings. Mr. Hewitt said there was then still an active power plant next to the property and that a good planning process was not to create a new residential area next to industrial land. He asked if the 16 properties were all zoned Office Research except for One Osprey Drive that was GRB. Mr. Stith agreed. Mr. Hewitt said One Osprey Drive was small, and if zoning were allowed there would be an 85-ft high building in the middle of the Osprey development. He thought that one

property was an issue as far as including it into all the other Office Research properties, and he asked how that zoning change related to the lawsuit with Michael Kane.

[Timestamp 1:17:00] Deputy City Attorney Trevor McCourt was present and said the zoning change started when the Housing Committee first considered rezoning many of the properties to be in the Gateway District. He said consequently the City and SoBow Square were involved in court-mandated mediation and the City Staff engaged with representatives of the Kane Company about potential rezoning of the properties using the Gateway zoning as a starting point, which modified the Gateway zoning to provide more housing opportunities in that neighborhood. He said if the City rezoned the properties in that manner, the City and SoBow Square would agree on a pre-arranged settlement agreement. Mr. Hewitt asked if the zoning would be before the Board if the City and Mr. Kane were not in a lawsuit. Attorney McCourt said it presented a good opportunity to provide a pilot ordinance to get higher density housing started and quickly progressed between the owner of many of the properties within the area and the City. He said it would not be before the Board if that had not happened, but a zoning change would be.

[Timestamp 1:19:60] Mr. Bowen said in the last few months, the Board had three circumstances where the issue was how to interface between a more dense use and a residential use. He said they had a discussion in the context of the area between Daniel and Court streets, and now they had it relative to the proposition and Osprey Landing. He asked how it would interface between more intensive use and residential and said it seemed that what came out of Hanover Street was the stepping down in height factor, breaking up the mass, and having setbacks. He said there was just flat land on the four easternmost of properties that interfaced with Osprey Landing and a ridge between Portsmouth Street and Osprey Landing and another 20 feet of height at some point. He said if they were to extend that to Osprey Landing, they could have 60-ft buildings on top of a 20-ft hill ten feet away from the homes in Osprey Landing. He said there was a set of principles that they had to deal with in terms of transitioning and following good zoning practices. Mr. Stith said there were standards for development sites that abutted residential zones, and in that scenario, they would have to have a 75-ft primitive buffer from the Mixed Residential District or CD4-L1 for residential or mixed use development. Chair Chellman said the Board's job was to make a recommendation to the City Council.

[Timestamp 1:24:35] Mr. Coviello said the abutting area between that area and Osprey Landing already had a tall hotel and that the area to the north and northwest would probably get developed in the next few years. He said he'd like the Board to focus their efforts on that. Mr. Bowen said the area northeast of the Homeward Suites was owned by Kane and was a developable piece of land. He asked what rules would be applied there and thought the Osprey Landing residents should be considered. It was further discussed. Mr. Samonas said the West End Yards served as a good litmus test and thought the Gateway District language was directed at facilitating mixed housing. He said the design discretion was that the hotel parcel would be an intermediary between Osprey Landing and whatever type of apartment or multi-family housing would go on the opposite side of Portsmouth Boulevard. Chair Chellman said it was about context. He said Hanover Street was more of an urban complex, and this was more of a suburban complex, so there was more space between the buildings and more open space. He said it was a leap to create more opportunities for higher density housing. Mr. Bowen said he was in favor of

developing the area but thought they had to be conscious of how it would interact on a big scale with the people next door. Osprey Landing was further discussed. Mr. Coviello said he would like to see Osprey Landing have codified language as one switched from Portsmouth Boulevard. He said the City had a mission to build more housing yet they handcuffed themselves to incentives, so it was difficult to try to build just market rate housing now. He said he wanted to provide more housing in the community at every level and push back on some of the additions in the area near the plant. Chair Chellman asked how Mr. Coviello felt about the base provisions to promote additional housing. Mr. Coviello said he didn't think the zoning ordinance would achieve as many units as could be comfortable on the site. He said the carrot of providing affordable housing was not achieving what the City wanted right now. It was further discussed. Mr. Coviello said he wanted something bigger than a four-story building. Councilor Moreau suggested a pilot program as a test run. Mr. Almeida said they could consider allowing construction of two- or three-story buildings within the 75-ft buffer to introduce more density and gain more housing. It was further discussed.

[Timestamp 1:44:51] Chair Chellman said the Board had to decide if they wanted to proceed with what happened next. Shared parking, assisted living, and retail sales were discussed. Mr. Coviello said mixed use on first-floor residential developments was currently empty.

Mr. Giuliano moved that the Board recommend to the City Council to hold their second reading on the proposed GNOD zoning amendments. Mr. Coviello seconded.

[Timestamp 1:54:14] There was further discussion. Mr. Giuliano said that allowing the City Council to have a second reading and give the public a chance to address the Council about their concerns might be the right next course of action. Councilor Moreau agreed and said they could see if it worked and then tweak it in the future. Mr. Almeida agreed. Mr. Samonas explained why he didn't agree, and it was further discussed. Mr. Bowen asked if child care could be added as an allowed use. He said he would also like the Board to be more specific about the protections, the step downs, and the surrounding neighborhoods. It was further discussed. Mr. Hewitt said he would not support the motion because he did not agree with how it was being done. He said City planning by lawsuit was not a good idea, noting that 10 of the 16 properties were owned by Mr. Kane and were part of a settlement. Chair Chellman explained that there had been prior discussion about it and that the issue came up with the Gateway change. Mr. Hewitt said it would set a bad precedent for the City. Attorney McCourt was the zoning change was in no way part of the settlement agreement but was something that the City had agreed to explore as the litigation was stayed. He said if it didn't pass, then litigation would resume but there would be no further damages on the part of any party.

*Mr. Giuliano **amended** his motion and moved that the Board recommend that the City Council hold a second reading on the proposed GNOD zoning amendments and to recommend adding Day Care as a permitted use. Mr. Coviello seconded. The motion **passed** by a vote of 8-1, with Mr. Hewitt voting against.*

- C. The request of **Scott Rafferty (Owner)**, to remove **185 Orchard Street** from The Historic District. Said property is located on Assessor Map 152 Lot 2-1 and lies within the Historic and General Residence A (GRA) Districts.

SPEAKING TO THE PETITION

[Timestamp 38:56] The applicant was not present. Mr. Stith said it was referred by the City Council and that the property owner requested it in writing. He said the property was subdivided in July and now the back property had frontage on Orchard Street and the new owner wanted it removed from the Historic District because no other property on Orchard Street was in the Historic District. Councilor Moreau said the reason for the boundary and the way it was drawn was to include the first lot all the way down the Gateway Street. She said the subdivider should have made the request at the time it was subdivided. She said it did not change the underlying zoning and that it would stay in the GRA District but would just not be subject to the Historic District Commission’s approval. It was further discussed. Mr. Giuliano said he assumed that going forward, an application to subdivide, like the Board heard last July, would address the fact that the property is in the Historic District. He asked where the subdivided property would end up without the applicant requesting a change. Councilor Moreau said the Planning Board could send the Council a recommendation based off the subdivision. It was further discussed. Mr. Coviello said it would make sense to follow the property lines, but in some places the City had very small properties and there was a fear of combining lots and changing the character of the street, so the City went into more depth but that it was still cohesive what the goal was before and what they wanted in the City now. Mr. Samonas asked if the Board would set a precedent about what would happen elsewhere in the City. Chair Chellman said zoning changes should occur on rear lot lines and not across the street, and that without this change, it would be the only Historic District property fronting on Orchard Street. Mr. Almeida asked what would happen if someone made alterations to their property that had a tiny portion in the Historic District. Mr. Stith said the District had to cross the structure. Mr. Almeida said corrections should be made on lot lines to clean it up.

Chair Chellman opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one was present to speak. Chair Chellman noted that the Board received public comment.

DECISION OF THE BOARD

Ms. Conard moved that the Board recommend that the City Council remove 185 Orchard Street from the Historic District, seconded by Mr. Almeida. The motion passed with all in favor.

V. CITY COUNCIL REFERRALS

- A. **Gateway Neighborhood Overlay District (GNOD)**. See above.

B. 185 Orchard Street. See above.

C. 165 & 177 Bartlett Street – Sidewalk & Temporary Construction Easements

Councilor Moreau moved that the Board recommend that the City Council accept sidewalk and temporary construction easements from property owners at 177 and 165 Bartlett Street. Ms. Conard seconded. The motion passed with all in favor. [Timestamp 41:55]

VI. OTHER BUSINESS

A. Presentation from Portsmouth High School Student ACE (Architecture, Construction, Engineering) Mentorship Club

[Timestamp 8:25] Kara Carlson, Nicholas Fischer and Seth Kozak from the Portsmouth High School Student ACE Mentorship Club presented their Sportscape Architects proposal. Mr. Kozak said it was a design for a sustainable facility built from shipping containers to better the community. They reviewed A 3D rectangular model of the exterior and interior floorplans, which included areas for rock climbing, a gym and wrap-around amenities. They said the total build time would be 6-10 months and the budget was a million dollars, which was subject to change based on the Board's input or the design requirements.

[Timestamp 19:15] Mr. Hewitt said the Community Campus was a challenging environment that did not have a lot of buildable space, and he encouraged the students to find out whether the site had wetlands. Mr. Fischer said he thought the location near a football field was a good one but that they would further research it. Councilor Moreau said there were doorways but no pathways or steps. Mr. Fischer said they did not include steps because they wanted it to be flat to the ground. Councilor Moreau asked how the walls would be insulated and if the roof would accommodate changes in weather. Mr. Fischer said the HVAC system would provide good circulation and that they planned to have ventilation fans on the roof. He said they factored in a 6-inch thickness to the shipping containers with insulation between them. Mr. Samonas asked who would have access to the building. Mr. Fischer said anyone in the community would and that they would make the cost as low as possible so that people could afford it. He said they would also do some fundraising and that it would also be a part of the Portsmouth Recreation Department. Mr. Samonas recommended that the students ask the Recreation Department how to structure the membership. Mr. Giuliano said it was a creative use of shipping containers and suggested that more light be let in. The materials for the project were further discussed. Ms. Conard asked if the students would be willing to modify their design, given that it was City property and they had the benefit of working with the City and Recreation staffs. The students agreed. Chair Chellman asked if there was a program for the number of people that the space would be provided for. Mr. Fischer explained that the architectural code had a certain requirement, so they needed to build it in a certain amount of square footage to house a certain amount of people. He said he would send the number to the Board. Chair Chellman asked if the design was a modular one that could expand on dry land. Mr. Fischer said the design was modular and could be taken apart and that shipping containers could be added.

B. 2 Russell Street – Requesting a second one-year extension of the Site Plan Approval, through December 15, 2025.

[Timestamp 49:35] Attorney John Lyons representing the developer Port Harbor Land was present and said they were requesting a second one-year extension of the Site Plan approval. He said they met all the deadlines for the original approval. He said they met with the Technical Advisory Committee (TAC) on October 8 and that TAC supported the second extension request and the application. He said there was additional planning required due to the parcel's unique nature, the realignment of Russell and Deer Streets, the relocation of the utility easement, ledge removal, and so on. He said they would also ask for a parking variance from the Board of Adjustment and would work with the City to complete the community space easement. He said they would have to apply separately for the two Conditional Use Permits later on.

Mr. Samonas confirmed that the Conditional Use Permits would expire in December.

There was no public hearing.

DECISION OF THE BOARD

Ms. Conard moved that the Board grant a second one-year extension of the site plan to December 15, 2025. Mr. Almeida seconded.

Mr. Hewitt said he would vote no like he did before because he still did not agree about allowing driveways and fire lanes for community spaces.

*The motion **passed** by a vote of 8-1, with Mr. Hewitt voting against.*

C. Chairman Updates and Discussion Items

Chair Chellman said a work session was scheduled for October 24 to continue zoning discussions. He said there were also two joint meetings scheduled for December.

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

There was no discussion.

VII. ADJOURNMENT

The meeting adjourned at 9:00 p.m.

Submitted,
Joann Breault
Planning Board Meeting Minutes Taker