MINUTES
PLANNING BOARD
PORTSMOUTH, NEW HAMPSHIRE
CITY HALL, MUNICIPAL COMPLEX, 1 JUNKINS AVENUE
7:00 P.M. APRIL 20, 2017

MEMBERS PRESENT: Dexter Legg, Chairman; Nancy Colbert-Puff, Deputy City Manager; David Moore, Assistant City Manager; Colby Gamester; Jay Leduc, Jody Record; Jeffrey Kisiel, and Jane Begala, Alternate

ALSO PRESENT: Mr. Taintor, Planning Director

MEMBERS ABSENT: Elizabeth Moreau, Vice Chairman; Rebecca Perkins, City Council Representative and Corey Clark, Alternate

I. DETERMINATIONS OF COMPLETENESS

A. Subdivision

   1. The application of the City of Portsmouth and Peter Happny, Owners, for property located at Rock Street Park and 66 Rock Street

   Mr. Gamester moved to determine that the application is complete according to the Subdivision Rules and Regulations and to accept it for consideration, seconded by Ms. Record. The motion passed unanimously.

II. PUBLIC HEARINGS – OLD BUSINESS

   The Board’s action in these matters has been deemed to be quasi-judicial in nature. If any person believes any member of the Board has a conflict of interest, that issue should be raised at this point or it will be deemed waived.

A. The application of J&M Family Properties, LLC, Owner, and Dunkin’ Donuts, c/o JFS Management Co., LLC, Applicant, for property located at 802 Lafayette Road, requesting a Conditional Use Permit under Section 10.1017 of the Zoning Ordinance for work within the tidal wetland buffer for pavement and drainage improvements and onsite stormwater quality treatment, with 11,200 ± s.f. of impact to the tidal wetland buffer. Said property is shown on Assessor Map 244 as Lot 2 and lies within the Gateway (GW) District. (This application was postponed from the November 17, 2016 Planning Board Meeting.)
Mr. Gamester moved to consider Items A and B under Public Hearings – Old Business be discussed together and voted on separately, seconded by Ms. Colbert Puff. The motion passed unanimously.

The Board discussed and took action on this item under Item II.B.

B. The application of J&M Family Properties, LLC, Owner, and Dunkin’ Donuts, c/o JFS Management Co., LLC, Applicant, for property located at 802 Lafayette Road, requesting Amended Site Plan Approval to re-develop the parking lot for improved site and drive-through circulation, revised parking layout, new trash enclosure, drainage improvements and stormwater management, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 244 as Lot 2 and lies within the Gateway (GW) District. (This application was postponed from the November 17, 2016 Planning Board Meeting.)

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION

Mr. Chris Tamula, MHF Design, stated the plans were revised in regards to landscaping. Alternatives were considered for the drive thru aisle at the existing parking area. It was determined the proposed design is the most advantageous alternative because the constraints of the site. A sketch was provided to the Board to include four additional crosswalks. He noted that one-way traffic flow would minimize pedestrian conflicts and confusion.

Mr. Tamula explained to Ms. Begala a brief explanation as to how the building became situated in the buffer. Mr. Tamula explained the proposed storm water management enhancements. Ms. Begala asked if the construction will impact the wetlands. Mr. Tamula replied that a silt fence will help to prevent an impact on the wetland. The total increase of impervious pavement is minimal. Wetland plantings and wetland seed mix will be placed around the dumpster area. He replied to Mr. Gamester that using a different wetland soil mix would be acceptable.

Mr. Tamula confirmed the entrance is an adequate width for a truck entering from the south or north.

Mr. Tamula explained that the requested waiver is for the dark sky lighting. Chairman Legg noted that the Board expressed interest in complying with dark sky lighting in the December meeting.

Mr. Taintor suggested to add stipulations for a traffic engineer to review and approve the crosswalk design and to review the way the thru pass crossing the dumpster pads because the pavement surface changes.

PUBLIC HEARING

Chairman Legg asked if anyone was present from the public wishing to speak to, for, or against the application. Seeing no one rise; the Chair closed the public hearing.

DISCUSSION AND DECISION OF THE BOARD
Ms. Colbert Puff moved to grant Conditional Use Permit Approval, seconded by Mr. Gamester, with the following stipulations:

1. The New England Roadside Matrix Upland Mix shown on the Landscape Plan shall be replaced with either a New England Conservation/Wildlife Mix or a New England Coastal Salt Tolerant Grass Mix.
2. Silt socks be used in place of silt fence.
3. The final NHDES approval shall be submitted to the Environmental Planner for review to ensure consistency with the Conditional Use Permit plan.
4. Maintenance as specified by the manufacturer shall be conducted on the proposed “First Defense” stormwater unit, and copies of a maintenance report shall be provided to the Environmental Planner annually.

The motion passed unanimously.

Mr. Gamester moved to deny your request for a waiver, seconded by Mr. Leduc, from the following regulations:

1. Sec. 2.5.4 – Site Plan Specifications and Required Exhibits and Data, item 3.(j) – Outdoor Lighting (type and placement of outdoor lighting fixtures, and photometric plan).
2. Sec. 10.2 – Compliance with Zoning Ordinance (All projects shall comply with the outdoor lighting dark sky friendly standards provided in the Zoning Ordinance).

The motion passed unanimously.

Mr. Gamester moved to grant Site Plan Approval, seconded by Mr. Moore, with the following stipulations:

1. The site plan shall be revised to include (a) the crosswalks shown on the sketch plan submitted at the April 20 Planning Board meeting and (b) striping to define the bypass lane where it crosses the dumpster pad, subject to any changes determined appropriate by the Traffic Engineer.
2. The site plan shall show replacement of the existing floodlights with fixtures complying with the dark sky friendly requirements of the Zoning Ordinance.
3. The New England Roadside Matrix Upland Mix shown on the Landscape Plan shall be replaced with either a New England Conservation/Wildlife Mix or a New England Coastal Salt Tolerant Grass Mix.
4. The following notes shall be added to the Landscape Plan (Sheet No. 7 of 9), as required by Section 2.13.3 of the Site Plan Review Regulations:
   1. “This Site Plan shall be recorded in the Rockingham County Registry of Deeds.
2. All improvements shown on this Site Plan shall be constructed and maintained in accordance with the Plan by the property owner and all future property owners. No changes shall be made to this Site Plan without the express approval of the Portsmouth Planning Director.”
5. The maintenance requirements for the “First Defense” stormwater unit shall be added to the site plan.
6. Silt socks be used in place of silt fence.
7. The Site Plan (Sheet 4 of 9) and Landscape Plan (Sheet 7 of 9) shall be recorded at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.

The motion passed unanimously.
C. The application of Mark McNally, Owner, for property located at 21 Brewster Street, requesting Site Plan Approval for the conversion of a former boarding house to 6 dwelling units with a footprint of 4,160 ± s.f. and gross floor area of 11,742 ± s.f., and the construction of a 6-bay attached garage with a footprint of 1,404 ± s.f., with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 138 as Lot 11 and lies within the General Residence C (GRC) District. (This application was postponed from the March 16, 2017, Planning Board meeting.)

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION

Mr. Kevin Baum, representing the applicant, provided a background of the project’s application progress. Mr. Alex Ross, Ross Engineering, provided photographs and described the existing conditions of the building highlighting the unsafe conditions. Proposed is a new paved driveway leading to a new paved parking lot and new garage in the rear of the property. The rear wall will be a retaining wall and existing fencing will be replaced where needed. He described the various proposed enhancements that will improve the drainage flow and decrease stormwater runoff in City’s sewer system. The drainage system is a stone leech field with plastic chambers. The runoff will drain through two catch basins before reaching City’s sewer manhole. The building will be served by new water line for building and separate for sprinkler system. The existing gas line will remain. The existing overhead electrical service will remain due to the lack of room on the site, which was preferred by DPW. The lighting plan and elevations were described. All parking is inside the garage. He noted that the applicant is currently consulting with the Inspection Department to confirm whether appropriate egress is provided for the basement unit.

Mr. Moore asked if the garage door width suggested by TAC was considered. Mr. Ross explained that the 18’6” width would not provide enough support. Thus, a 17’ width was proposed, which Department of Public Works determined acceptable.

Ms. Begala asked whether there will be rear fire escapes. Mr. Ross explained that each unit extends from the front to the back of the building. He noted that the proposed systems are in compliance with existing regulations. Ms Begala asked to identify the location of the overhead electrical utilities. Mr. Ross explained the location of that.

PUBLIC HEARING

Chairman Legg asked if anyone was present from the public wishing to speak to, for, or against the application. Chairman Legg noted that two letters were received from abutters. Seeing no one rise; the Chair closed the public hearing.

DISCUSSION AND DECISION OF THE BOARD

Mr. Moore moved to grant the requested waiver to allow the electrical lines to be above ground, seconded by Mr. Gamester. The motion passed unanimously.

Mr. Moore moved to grant Site Plan Approval, seconded by Mr. Leduc, with the following stipulations:

Conditions Precedent (to be completed prior to the issuance of a building permit):

1. The Site Plan shall include the following notes:
“1. This Site Plan shall be recorded in the Rockingham County Registry of Deeds.
2. All improvements shown on this Site Plan shall be constructed and maintained in accordance with the Plan by the property owner and all future property owners. No changes shall be made to this Site Plan without the express approval of the Portsmouth Planning Director.”

2. The Site Plan and Landscape Plan shall be recorded at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.
3. The applicant shall prepare a Construction Management and Mitigation Plan (CMMP) for review and approval by the City’s Legal and Planning Departments.
4. Applicant shall provide documentation regarding maintenance of the stormwater management system in perpetuity to be reviewed and approved by DPW.
5. The additional cost for relocating the City’s DMH #6 shall be added to the fee for the required stormwater permit.
6. The applicant shall provide confirmation from the Inspection Department that appropriate egress is provided for the basement unit.

**Conditions Subsequent (to be completed prior to the issuance of a Certificate of Occupancy):**

1. The stormwater system shall be inspected during construction.

The motion passed unanimously.

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Mr. Taintor explained that currently a developer can request a conditional use permit to increase a building footprint beyond permitted, if a specific amount of community space is provided. The applicant of the Vaughan Street project requests to bank the community space to the City and credit it toward future development. This concept would enable the City to achieve a larger portion of the future pathway between Maplewood Avenue and Bartlett Street. He noted that banked community space would be restricted within the district. Mr. Moore added that this ordinance permits the credit to be transferred, awarded, or sold to another developer. Mr. Taintor suggested two revisions to the amendment.

Ms. Begala questioned whether there is an opportunity other than through to incentives to encourage a developer to donate the excess unimproved land for a public good.

PUBLIC HEARING

Chairman Legg asked if anyone was present from the public wishing to speak to, for, or against the proposed amendment.

Mr. Rick Becksted, 1395 Islington Street #1, expressed concerns for banking incentives and potential misuse of the intent of the Ordinance. He felt that the proposed amendment should not be applied on the Cathartes’ proposed community space to avoid the appearance of a legal conflict.

Ms. Lucia Vonletkemann, 87 Sims Avenue, asked if the credit is temporary. Mr. Taintor explained that the developer would convey the land to the City. The credit to the developer is temporary and only lasts for a maximum of 15 years. He described the height or footprint incentives that the credit could be applied to.

Mr. Becksted expressed concerns for the building height incentives and stated in opposition of the proposed amendment.

Seeing no one else rise; the Chair closed the public hearing.

DISCUSSION AND DECISION

Mr. Moore moved to recommend the proposed zoning ordinance be further amended by:

1. Inserting the new subparagraph as recommend in memo.
2. Additional clarification in draft ordinance for (2) (a) to insert “excess” in front of “unimproved”.

Seconded by Mr. Gamester.

Ms. Begala expressed concerns that the banking could potentially be leveraged by a developer. Mr. Taintor explained that the use of incentives requires a conditional use permit. He explained that the credit can be applied in the overlay district to either a larger floor space or increased building height. He added that if a future developer wanted to use the credit, the developer would pay the cost for creating the park. Further discussion was had regarding any potential risks to the City. The Board discussed and decided to stipulate the banked community space would be available for up to 10 years. Mr. Taintor noted that it is not spot zoning because it does not change the intensity of the parcel.

The motion passed unanimously.
C. The request of Raymond and Maryrose Richer for the City to release any interest it may have in the portions of two paper streets (Moffat Road and Woodworth Avenue) adjoining their property at 85 Woodworth Avenue. (City Council referral)

Mr. Ray Richer, 85 Wentworth Avenue, provided a brief overview of the request to improve access to the land.

Ms. Begala asked if the private owner maintaining the property conveys the land. Mr. Taintor explained that the City would have had to accept the street during a certain timeframe and he described the implications of adverse possession. He stated the Department of Public Works expressed concern that releasing the street would prevent any potential for a public street in the future. Ms. Walker noted that the variance was received for reduced street frontage and there is a current application for zero street frontage.

Mr. Kisiel noted that most of the parcels are either a wetland or within the wetland buffer.

PUBLIC HEARING

Chairman Legg asked if anyone was present from the public wishing to speak to, for, or against the proposed amendment.

Mr. Rich Duddy, 56 Swett Avenue, felt that two residents are representing themselves and spoke in favor of the request.

Mr. Todd Bernath, 72 Woodworth Avenue, and Mr. Neil Robinson, 177 Swett Avenue, spoke in favor of the request.

Mr. David Calkins, 175 Woodlawn Circle, provided a background of the requests to connect Moffat Street and Swett Avenue and cited a letter from Derek Durbin representing Mr. David Calkins.

Mr. Robinson noted there was a Board of Adjustment meeting for the property in question and all abutters are not in favor of connecting the road because there is intrinsic value of a dead end street.

Seeing no one else rise; Chairman Legg closed the public hearing.

DISCUSSION AND DECISION

Mr. Taintor replied to Ms. Begala that the City Attorney did conduct a review of the request.

Ms. Colbert Puff moved to recommended that the City release any interest it may have in the paper streets abutting 85 Woodworth Avenue, as shown on the exhibit titled “Woodworth Ave / Moffat St / Swett Ave”, prepared by the Planning Department for this meeting, with the following exception:

1. The area between the end of the accepted portion of Woodworth Avenue and the intersection with Moffat Street shall be reserved for snow storage.

Seconded by Mr. Leduc.

Mr. Kisiel stated the proposed subdivision has not been seen by the Planning Board.
Mr. Taintor explained how the law has been interpreted and applied for particular situations.

Mr. Legg felt in support of the motion because the City did not accept the street in the 20-year window.

Ms. Begala asked whether the property is assessed to include the paper street. Mr. Taintor replied that the owner would have to have the land resurveyed and recorded in the deed for that to occur.

*The motion passed by a vote 6-1-0, with Mr. Kisiel opposed.*

D. The proposal by the City of Portsmouth to acquire from Peter Happny a sewer easement off Rock Street in connection with the construction of the new municipal parking garage; and to convey to Mr. Happny 2,275 ± s.f. of City-owned land adjoining Rock Street Park. (City Council referral)

*The Planning Board recommended that the City Council accept the sewer easement and grant the land conveyance as proposed.*

E. The application of the City of Portsmouth and Peter Happny, Owners, for property located at Rock Street Park and 66 Rock Street, requesting Preliminary and Final Subdivision Approval (Lot Line Revision) between two lots as follows:

1. Map 138, Lot 60 decreasing in area from 62,807 ± s.f. (1.4418 acres) to 60,532 ± f. (1.3896 acres) with 71.50 feet of frontage on Rock Street and Sudbury Street.
2. Map 138, Lot 61 increasing in area from 12,508 ± s.f. (0.2871 acres) to 14,783 ± f. (0.3394 acres) with 47.50 feet of frontage on Brewster Street.

Said lots lie within the Municipal (M) district and Character District 5 (CD5) which have no minimum requirements for lot area or street frontage.

*The Chair read the notice into the record.*

**SPEAKING TO THE APPLICATION**

Mr. John Chagnon, Ambit Engineering, explained that the proposed plan is to convey a portion of the lot from the Rock Street Park to the Happny parcel. Mr. Happny has offered to grant an easement for the sewer line to be routed more transitional jog versus a perpendicular jog. He asked to discuss how many waivers would have to be granted.

**PUBLIC HEARING**

Chairman Legg asked if anyone was present from the public wishing to speak to, for, or against the application. Seeing no one rise; the Chair closed the public hearing.

**DISCUSSION AND DECISION OF THE BOARD**

*Mr. Moore moved recommend that the City Council accept the sewer easement and grant the land*
conveyance as proposed, seconded by Mr. Gamester. The motion passed unanimously.

Mr. Moore moved to waive the following requirements of the Subdivision Rules and Regulations:
(a) Sec. III.B.1.d., requiring Technical Advisory Committee review for a subdivision plan showing construction of a public sewer facility.
(b) Sec. V.5, requiring the subdivision plan to show the entire area proposed to be subdivided. Seconded by Ms. Record. The motion passed unanimously.

Mr. Moore moved to grant Preliminary and Final Subdivision Approval with the following stipulations:
1. Property monuments shall be set as required by the Department of Public Works prior to the filing of the plat.
2. GIS data shall be provided to the Department of Public Works in the form as required by the City.
3. The final plat and all easement deeds shall be recorded concurrently at the Registry of Deeds by the City or as deemed appropriate by the Planning Department. Seconded by Mr. Gamester. The motion passed unanimously.

F. The application of Alan G. Brady and Kendall E. Perkins, Owners, for property located at 123 Clinton Street, requesting Conditional Use Permit approval to create a two-bedroom, 750 s.f. detached accessory dwelling unit on the second story of a detached garage (to be constructed), with associated paving, lighting, and utilities. Said property is shown on Assessor Map 162 as Lot 41 and lies within the General Residence A (GRA) District.

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION

Mr. Alan Brady, 123 Clinton Street, was present to speak to the application.

PUBLIC HEARING

Chairman Legg asked if anyone was present from the public wishing to speak to, for, or against the application. Seeing no one rise; the Chair closed the public hearing.

DISCUSSION AND DECISION OF THE BOARD

Mr. Gamester moved to grant the conditional use permit as presented, with the following findings and stipulation, seconded by Ms. Record.

Findings:
1. Exterior design of the ADU is compatible with the existing residence on the lot through architectural use of building forms, scale and construction materials. Comment: The proposed garage/ADU structure will be a gable-roofed building with two shed dormers, and thus not dissimilar to other buildings in the neighborhood. Compared to the existing dwelling, the new building will be 30% wider (27.4 ft. vs. 21 ft.), approximately the same depth, and about 6 feet shorter at the ridge line (25.5 ft. vs. about 31 ft.).
2. The site plan provides adequate open space and landscaping that is useful for both the ADU and the primary dwelling.  
   Comment: The site plan shows approximately 1,500 sq. ft. of open space along the side and rear of the proposed garage/ADU structure, with a large yard remaining to serve the existing dwelling.

3. The ADU will maintain a compatible relationship to adjacent properties in terms of location and design, and will not significantly reduce the privacy of adjacent properties.  
   Comment: The proposed garage/ADU structure and driveway/parking area are in a traditional location for accessory residential parking, situated toward the rear of the lot. The closest existing building to the proposed structure will be a shed at the rear of 139 Clinton St. To buffer the new structure from abutting properties, 4 mature maple trees will be preserved (3 along the side lot line and one in the rear), and a row of 10 arborvitae will be planted along the rear lot line.

4. The ADU will not result in excessive noise, traffic or parking congestion.  
   Comment: Adequate off-street parking will be provided.

Condition Precedent (to be completed prior to the granting of a certificate of occupancy):

1. In accordance with Sec. 10.814.70 of the Zoning Ordinance, the owner is required to obtain a certificate of use from the Planning Department verifying compliance with all standards of Sec. 10.814, including the owner-occupancy requirement, and shall renew the certificate of use annually.

The motion passed unanimously.

G. The request of 299 Vaughan Street, LLC, and Sanel Realty Co., Inc., Owners, and 299 Vaughan Street, LLC c/o Cathartes, Applicant, for property located at 299 and 225 Vaughan Street and off Vaughan Street, for design review under the Site Plan Review Regulations for the construction of a hotel with 143 guest rooms and 2,500± s.f. of commercial space, a 43,325± s.f. public park along the North Mill Pond waterfront (to be constructed in two phases), and a 2,869± s.f. public path from Vaughan Street to the waterfront park. Said properties are shown on Assessors Map 123 as Lot 15 and Assessors Map 124 as Lots 10 and 11, and lie within Character District 5 (CD5), the North End Incentive Overlay District, the Downtown Overlay District (DOD) and the Historic District.

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION

Mr. Patrick Crimmins, Tighe & Bond, reviewed the application progress and the required land use approvals and permits. He described the proposed design and uses. He highlighted that the project includes deeding Green Street to widen the road; widening the brick, pedestrian gateway to the community space at 15-foot minimum; adding a pocket park along Green Street, an outdoor seating area, bike storage, and a waterfront community space. The project would provide at least 30% community space of total lot area, which is 16,603 s.f. All utilities are clustered and screened, which is consistent with the utilities on the parcel across the street. The design of the entryway to the hotel will be activated and landscaped. A valet parking easement is proposed. He described the tiered façade of the building. A rain garden and stormwater treatment system will be added and will require necessary DES permits. A 7’ easement along the easterly property allows for a future pathway.
Ms. Robbie Woodburn, Woodburn & Company Landscape Architecture, explained the community space could potentially be an art park. The proposed plan includes removing and restoring the areas of invasive species. The plan intends to improve the connectivity from Vaughan Street to the community space. She described the main pedestrian entrance to the space adjacent to the parking and the streetscape proposed around the hotel. She described the proposed landscape plan site elements.

Ms. Begala asked where the pocket garden is located. Ms. Woodburn explained that it intends to direct pedestrians across the crosswalk and to a future connection to the abutting building.

Mr. Gamester asked what the width of the pedestrian way near the entrance of 3S Artspace. He suggested that the area be widened to allow for easy access for ambulance.

Mr. Johnston replied to Chairman Legg that the valet parking will be used when necessary for hotel registration.

Ms. Woodburn replied to Chairman Legg that the site landscaping elements will be consistent with other parks in the City.

Mr. Taintor advised to consider the first scenario flood plain. Mr. Moore asked about tidal levels, ADA accessibility, and the pylons.

Mr. Moore suggested to consider whether the parking along the proposed pathway may inhibit the pedestrian experience.

Mr. Crimmins described the elevations in the water that indicate it is relatively flat.

**PUBLIC HEARING**

Chairman Legg asked if anyone was present from the public wishing to speak to, for, or against the application.

Mr. Bill Buckley expressed concerns for lighting, hours, and use.

Ms. Lucia Vonletkemann, 87 Sims Avenue, spoke in favor of the proposed community space and felt concerned about the building height.

Mr. Buckley encouraged the design to consider the potential impact on the existing wildlife.

Seeing no one else rise; the Chair closed the public hearing.

**DISCUSSION AND DECISION OF THE BOARD**

*Mr. Gamester moved to determine that the design review process of the application has ended, seconded by Mr. Moore. The motion passed unanimously.*

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**IV. ADJOURNMENT**
It was moved, seconded, and passed unanimously to adjourn the meeting at 10:40 p.m.

Respectfully Submitted,

Marissa Day
Acting Secretary for the Planning Board

These minutes were approved at the June 15, 2017 Planning Board Meeting.