

ACTION SHEET

**PLANNING BOARD
PORTSMOUTH, NEW HAMPSHIRE**

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

7:00 PM

MAY 18, 2017

MEMBERS PRESENT: Dexter Legg, Chairman; Elizabeth Moreau, Vice Chairman; Rebecca Perkins, City Council Representative; Nancy Colbert-Puff, Deputy City Manager; David Moore, Assistant City Manager; Colby Gamester; Jody Record, Jeffrey Kisiel; and Jane Begala, Alternate;

ALSO PRESENT: Juliet T. H. Walker, Planning Director

MEMBERS ABSENT: Jay Leduc and Corey Clark, Alternate

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I. APPROVAL OF MINUTES

- A. Approval of Minutes from the April 20, 2017 Planning Board Meeting;
- B. Approval of Minutes from the April 27, 2017 Planning Board Meeting.

Voted to postpone approval of both sets of minutes until the June 15, 2017 Planning Board Meeting.

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II. DETERMINATIONS OF COMPLETENESS

- A. Site Plan Review:

- 1. The application of **S & G Realty, Owner**, for property located at **Chevrolet Avenue**, requesting Site Plan Approval

Voted to determine that the application for Site Plan approval is complete according to the Site Plan Regulations and to accept it for consideration.

- 2. The application of **Borthwick Forest, LLC, and KS Borthwick, LLC, Owners**, and **Borthwick Forest, LLC, Applicant**, for property located **on proposed subdivision road to be created off Borthwick Avenue and off WBBX Road**, requesting Site Plan Approval.

Voted to determine that the application for Site Plan approval is complete according to the Site Plan Regulations and to accept it for consideration.

B. Subdivision:

1. The application of **Borthwick Forest, LLC, KS Borthwick, LLC, and HCA Realty, Inc., Owners, and Borthwick Forest, LLC, Applicant**, for property located **off Borthwick Avenue and WBBX Road**, requesting Preliminary and Final Subdivision Approval

Voted to determine that the application for subdivision approval is complete according to the Subdivision Rules and Regulations and to accept it for consideration.

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III. 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 **Peter Fregeau and Westwind Townhomes of Portsmouth Condominium Association, Owners**, for property located at **1177 and 1179 Sagamore Avenue**, requesting Site Plan Approval for demolition of an existing structure and the construction of three new condominium dwelling units (two separate building, seven total units) with related paving, lighting, utilities, landscaping, drainage, and associated site improvements. Said property is shown on Assessor Map 224 as Lots 12 and 13 and lies within the Mixed Residential Office (MRO) District. (The applicant has filed a notice of voluntary lot merger to combine the two lots into a single lot.) (This application was postponed at the April 27, 2017 Planning Board Meeting).

Voted to **grant** Site Plan Approval with the following stipulations:

Conditions Precedent (to be completed prior to the recording of the site plan)

1. The applicant shall record a notice of voluntary lot merger, executed by the Planning Director.
2. The final sidewalk and drainage easement plans and deeds shall be reviewed and approved by the Planning and Legal Departments.
3. The applicant shall secure all necessary easements from the abutting property owner for construction of the sidewalk to the south of the driveway.
4. That either arborvitae, or other densely planted shrubbery, shall be planted in place of the fence extending along Sagamore Avenue and for 40' along the southern lot.

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

1. The site plan, landscape plan, and easement plans and deeds shall be recorded at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.
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B. The application of **215 Commerce Way, LLC and Moray, LLC, Owners**, for property located at **215 and 235 Commerce Way**, requesting amended Site Plan Approval to construct a 66,000 s.f., 3-story office building, with a footprint of 22,000 \pm s.f., with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 213 as Lot 11 and Assessor Map 216 as Lot 1-8A and 1-8B and lies within the Office Research District. (This application was postponed at the April 27, 2017 Planning Board Meeting).

Voted to **grant** Site Plan Approval with the following stipulations:

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

1. The Site Plan (Sheets C-2A and C-2B) and the Landscape Site Plan (Sheet L-01) shall be recorded at the Registry of Deeds by the City or as determined appropriate by the Planning Department.
2. The subdivision plan and deed from PSNH shall be recorded at the Registry of Deeds by the City or as determined appropriate by the Planning Department.
3. The applicant shall contribute \$42,000 to the City for reconstruction of the sidewalk on Portsmouth Boulevard between Commerce Way and Market Street, and \$6,900 toward traffic and pedestrian signal upgrades at the intersection of Market Street and Portsmouth Boulevard.
4. In lieu of requiring a separate water service to the property at 215 Commerce Way, the property owner of 195 Commerce Way shall be responsible for payment of water and sewer fees for both 195 and 215 Commerce Way until such time title to either property is transferred.
5. A recorded deed restriction shall be placed on both 195 and 215 Commerce Way requiring that a separate water service from the water main in Commerce Way directly to the building at 215 Commerce Way shall be installed upon title transfer of either 195 or 215 Commerce Way.
6. As consideration for foregoing immediate installation of a water service to 215 Commerce Way, the property owner shall pay the sum of \$18,653.14, which covers the cost incurred by the City to provide water service.
7. The applicant shall videotape construction routes to the project prior to the initiation of site work, and shall be responsible for repairing any damage during construction. The site plan security shall be sufficient to cover any such repair.

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IV. PUBLIC HEARINGS – NEW BUSINESS

A. The application of **Paul and Diane Messier, Owners**, for property located at **171 Walker Bungalow Road**, requesting Conditional Use Permit approval to create a one story, 320 \pm s.f. attached accessory dwelling unit, with associated paving, lighting, and utilities. Said property is shown on Assessor Map 202 as Lot 8 and lies within the Single Residence B (SRB) District.

Voted to **grant** Conditional Use Permit approval with the following stipulation:

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.

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B. The application of **Joseph and Ellen Yarborough, Owners**, for property located at **746 Middle Road**, requesting Conditional Use Permit approval to create a two-bedroom, 750 \pm s.f. detached accessory dwelling unit, with associated paving, lighting, and utilities. Said property is shown on Assessor Map 232 as Lot 49 and lies within the Single Residence B (SRB) District.

Voted to **grant** Conditional Use Permit approval with the following stipulation:

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.

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C. The application of **Swirly Girl II, LLC, Owner**, for property located at **244 South Street**, requesting Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within the inland wetland buffer to convert a three-unit residential building to a two-unit residential building, construct a 27' high, 22' x 30' addition, a 10' high, 7' x 17 addition, a 6' x 12.5' deck, the addition of 581 \pm s.f. of pervious driveway and stormwater management structures, with 1,091 \pm s.f. of impact to the wetland buffer. Said property is shown on Assessor Map 111 as Lot 3 and lies within the Single Residence B (SRB) District and the Historic District.

Voted to **postpone** this application to the June 15, 2017 Planning Board meeting.

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D. The application of **Five Hundred Five Lafayette Road, LLC, Owner**, and **Lens Doctors, Applicant**, for property located at **605 Lafayette Road**, requesting Site Plan Approval for the demolition of the existing building and the construction of a proposed 2-story office building, with a footprint of 7,000 \pm s.f. and gross floor area of 14,000 \pm s.f., with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said properties are shown on Assessor Map 229 as Lot 9 and lies within the Gateway (GW) District.

Voted to **postpone** this application to the June 15, 2017 Planning Board meeting.

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E. The application of **Pauline M. Dowd, Owner**, and **Tuck Realty Corporation, Applicant**, for property located at **288 Peverly Hill Road**, requesting Site Plan Approval for the demolition of an existing residence and the construction of a proposed Planned Unit Development (PUD) consisting of two 2 ½ story buildings, with five units in “Building A” with a footprint of 5,200 ± s.f. and gross floor area of 13,230 ± s.f., and four units in “Building B” with a footprint of 4,160 ± s.f. and gross floor area of 10,504 ± s.f., with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 255 as Lot 8 and lies within the Single Residence B (SRB) District.

Voted to **postpone** this application to the June 15, 2017 Planning Board meeting.

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F. The application of **S & G Realty, Owner**, for property located at **Chevrolet Avenue**, requesting Site Plan Approval for demolition of the existing buildings and the construction of a proposed 3 unit, 3-story residential development, with a footprint of 2,426 s.f. ± with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 147 as Lot 30 and lies within the General Residence C (GRC) District.

A. Voted to recommend that the City Council approve the Boundary Line Agreement and Easement request from S & G Realty.

B. Voted to **grant** Site Plan Approval with the following stipulations:

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

1. The Site Layout and Landscaping Plan (Sheet C2) shall be recorded at the Registry of Deeds by the City or as determined appropriate by the Planning Department.
 2. After approval by the City Council, the Boundary Line Agreement and Easement Deed shall be recorded at the Registry of Deeds by the City or as determined appropriate by the Planning Department.
 3. The applicant shall work with the abutter to rebuild the fence along the property line and in doing so ensure that the site distance is not impeded.
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G. The application of **Borthwick Forest, LLC, KS Borthwick, LLC, and HCA Realty, Inc., Owners**, and **Borthwick Forest, LLC, Applicant**, for property located **off Borthwick Avenue and WBBX Road**, requesting Preliminary and Final Subdivision Approval to combine four lots into one lot and create a new public right-of-way as follows:

1. To consolidate the following four lots:
 - a. Lot 25 as shown on Assessor Map 241 having an area of 22.807 ± acres,
 - b. Lot 26 as shown on Assessor Map 241 having an area of 4.927 ± acres,
 - c. Lot 113 as shown on Assessor Map 233 having an area of 13.815 ± acres,
 - d. Lot 112 as shown on Assessor Map 233 having an area of 0.732 ± acre;into a single lot containing 42.281 acres; and
2. To create a public right-of-way from Borthwick Avenue to the consolidated lot, as follows:

- a. Following a reserved right-of-way across land of HCA Realty, Inc. (Assessors Map 234 Lot 7-4A), having an area of $44,032 \pm$ sq. ft.,
- b. Following a right-of-way across land of Boston and Maine Corporation (Assessors Map 165 Lot 14), having an area of $5,457 \pm$ sq. ft., and
- c. Extending into the consolidated lot with an area of $31,657 \pm$ sq. ft. ($0.727 \pm$ acre), thereby reducing the area of the consolidated lot to $41.544 \pm$ acres;

said proposed public right-of-way having a total area of $81,146 \pm$ sq. ft. ($1.863 \pm$ acre) and total length of approximately 1,000 feet (0.2 mile).

Said properties lie within the Office Research (OR) district where the minimum lot area is 3 acres and the minimum continuous street frontage is 300 feet.

- A. Due to the specific circumstances of the proposed subdivision location in relation to access off of Borthwick Ave and the location of the railroad which bisects the property, and considering that the proposed subdivision road will properly carry out the spirit and intent of the regulations, the Board voted to **grant** a waiver to Section VI 3(I) to allow a cul-de-sac subdivision road that is greater than 500 feet in length.
- B. Voted to grant Preliminary and Final Subdivision Approval with the following stipulations:
 1. The 20' emergency access road from Islington Street to the cul-de-sac shall be replaced with a 10' wide multi-use path.
 2. The applicant shall work with DPW to locate drop inlet / catch basins or other drainage as the Department finds appropriate near the rail crossing.
 3. The applicant shall coordinate with DPW and PanAm to refine the roadway design including geotechnical design, cross sections, drainage features, and utility locations with final design being subject to final approval by DPW.
 4. Any easements required for roadway and drainage maintenance and management will be subject to final review and approval by the City.
 5. The pavement details shall include addition of at least 3" of 'fine' pavement binder for the roadway's first course of pavement to accommodate construction traffic.
 6. The applicant shall agree to pay for the services of an oversight engineer, to be selected by the City, to monitor the construction of the road.
 7. Lot numbers as determined by the Assessor shall be added to the final plat.
 8. Property monuments shall be set as required by the Department of Public Works prior to the filing of the plat.
 9. GIS data shall be provided to the Department of Public Works in the form as required by the City.
 10. The final plat and all easement plans and deeds shall be recorded concurrently at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.

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H. The application of **Borthwick Forest, LLC, Owner, Boston and Maine Corp, Owner, and HCA Realty, Inc., Owner**, for properties located off **Borthwick Avenue**, requesting Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work including a 60' wide road right-of-way with a 28' wide road and 10' paved multiuse path including an at grade railroad crossing and new 50' radius cul-de-sac and a new 50,000 s.f. building. Work within the inland wetland buffer includes construction and grading for portions of a new roadway, railroad crossing, multiuse path, drainage structures and the restoration of WBBX Road, with $18,100 \pm$ s.f. of temporary impact and

13,500 ± s.f. of permanent impact to the inland wetland buffer. Said properties are shown on Assessor Map 233 as Lot 113, Assessor Map 165, as Lot 14, and Assessor Map 234, as Lot 7-4A and lie within the Office Research (OR) District.

Voted to **grant** Conditional Use Permit Approval with the following stipulations:

1. The Restoration Plan shall specify that any mulch used shall be untreated and shall include a minimum number and size of plants so that the restoration work can be accurately completed by the restoration contractor.
2. A note shall be added to the recorded Site Plans that the property owner shall provide an as-built restoration plan and follow-up monitoring one and three years after the restoration work has been completed to insure a survival rate of at least 80% of the new plantings. The monitoring plan shall be submitted to the Planning Department and shall include a requirement that any new invasive species found in the restoration area during the site monitoring be mechanically removed.
3. The applicant shall provide a deed restriction or protective covenant providing additional protections for land located within the 100-foot wetland buffer including, at a minimum, buffer areas around the prime wetlands area and area in the southern portion of the property where the Blanding Turtle Habitat has been identified. This protective covenant shall be reviewed and approved by the Planning and Legal Departments.
4. A note shall be added to the recorded Site Plans that ATV use shall be prohibited in the described Blanding Turtle nesting area and the impacted area shall be signed accordingly by the property owner.
5. Plans shall be amended to accurately define the prime wetland area on the southern portion of the site.

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I. The application of **Borthwick Forest, LLC, and KS Borthwick, LLC, Owners, and Borthwick Forest, LLC, Applicant**, for property located **on proposed subdivision road to be created off Borthwick Avenue and off WBBX Road**, requesting Site Plan Approval to construct a 50,000 s.f. office building with related paving, lighting, utilities, landscaping, drainage, fire access drive and associated site improvements. Said property is shown on Assessor Map 241 as Lots 25 & 26 and Assessor Map 233 as Lots 112, 113, & 114 and lies within the Office Research (OR) and the Single Residence B (SRB) Districts.

Voted to **grant** Site Plan Approval with the following stipulations:

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

1. To address the recommended traffic mitigation measures at the intersection of Route 33/ Borthwick Avenue and pedestrian safety improvements at Greenland, Sherburne and Borthwick Avenue, the applicant shall provide a meaningful cost-sharing contribution, to be determined in consultation with the DPW and Planning Department, to advance the design development process for long-term intersection improvements, or for DPW's use to investigate the feasibility of realigning Borthwick Avenue as it approaches Route 33.
2. The Site Plans (C 102.1 and C 102.2), General Notes Sheets (G-101.1 and G-101.2), and Landscape Plans (C-105.1 and C-105.2) shall be recorded at the Registry of Deeds by the

City or as determined appropriate by the Planning Department and shall include the following notes:

- “1. The Site Plan shall be recorded in the Rockingham County Registry of Deeds.
 2. All improvements shown on the 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.
 3. The property owner and all future property owners shall be responsible for the maintenance, repair and replacement of all required screening and landscape materials.
 4. All required plant materials shall be tended and maintained in a healthy growing condition, replaced when necessary, and kept free of refuse and debris. All required fences and walls shall be maintained in good repair.
 5. The property owner shall be responsible to remove and replace dead or diseased plant materials immediately with the same type, size and quantity of plant materials as originally installed, unless alternative plantings are requested, justified and approved by the Planning Board or Planning Director.”
3. The applicant shall review the proposed best management practices of the mulch in landscaped areas with the Fire Department to confirm that potential fire hazards have been adequately addressed.

Conditions Subsequent (to be completed prior to the final release of site plan security):

1. The property owner shall prepare a monitoring report for the intersection of Borthwick Avenue with Greenland Road and Sherburne Road within one year of the occupation of the proposed office building.

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V. CITY COUNCIL REFERRALS/REQUESTS

*The Board's action in these matters has been deemed to be legislative 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. Request from S & G Realty for a Boundary Line Adjustment and Easement.

Voted to recommend that the City Council approve the Boundary Line Agreement and Easement request from S & G Realty.

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- B. Request from David Calkins for the City Council to authorize the issuance of a building permit for property off of Swett Avenue, Moffat Street and Woodworth Avenue.

Vote to postpone consideration of this request pending further information from the applicant regarding the proposed location and design of the private road accessing these lots.

Voted to recommend that the City Council authorize the issuance of a building permit subject to all land use approvals.

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VI. PRELIMINARY CONCEPTUAL CONSULTATION

A. The request of **The Provident Bank, Owner**, for property located at **25 Maplewood Avenue**, for Preliminary Conceptual Consultation, to construct a four story mixed use building, including 1st floor commercial/retail/parking, 2nd floor offices, and 3rd and 4th floor residential. Said property is shown on Assessor Map 126 as Lot 2, and lies within Character District 5 (CD-5), the Downtown Overlay District (DOD) and the Historic District.

A presentation was made by the applicant.

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VII. OTHER BUSINESS

A. Request that the City accept a sewer line easement from Charles Schultz and Katherine Cahill of 240 Myrtle Avenue and from David Lear of 260 Myrtle Avenue.

Voted to postpone this matter indefinitely.

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B. Request of Richard Fusegni, for property located at 201 Kearsarge Way, for a six month extension of Final Subdivision approval which was granted by the Planning Board on June 16, 2016. A first six month extension was granted by the Planning Director to expire on June 16, 2017.

Voted to grant a second six month extension of Subdivision approval, to expire on December 16, 2017.

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V. ADJOURNMENT

A motion to adjourn at 11:05 pm was made and seconded and passed unanimously.

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Respectfully submitted,

Jane M. Shouse
Acting Secretary for the Planning Board