

MINUTES

PLANNING BOARD PORTSMOUTH, NEW HAMPSHIRE

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

6:30 PM

AUGUST 17, 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; Corey Clark, Alternate

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

MEMBERS ABSENT: Jay Leduc,

WORK SESSION on Gateway Mixed Use Zoning Amendments

Chairman Legg stated that the purpose of the work session was to get conceptual ideas of what mixed use space would look like in the Gateway zones in Portsmouth. The intent is to have the work session tonight, then Thursday 8/24/17 hold a public hearing. Depending on feedback the Board may set up a second public hearing for 9/12/17. Once the Board is ready to make final decisions it would go to City Counsel for presentation. The hope is that the Board would be able to give feedback to the red line version tonight.

Ms. Walker introduced Ted Brovitz a consultant with Community Planning. Also made sure to remind the public that this project has its own page on cityofportsmouth.com. The public can reference that page for more information and take a short survey or leave general comments.

Mr. Brovitz began the presentation stating that the Gateway Project is a follow up to the recently adopted City Master Plan. The housing policy goal is to create more diverse housing for affordable workforce and downsizing opportunities. These plans focused on the gateway district that currently doesn't allow housing. The plans incorporated mixed-use space and focused on reinvestment in the future. The Master Plan envisioned a collection of mixed-use developments. Places where people can live, work, shop, play and learn. The first draft of the bi-laws was sent out last month, and the Board is working on revisions to keep this project moving.

Mr. Brovitz created conceptual plans for 4 different gateway areas the Kmart Plaza on Lafayette, the Connect Community Church, the Frank Jones Center, and the Mirona Road area.

Mr. Brovitz introduced the first conceptual plan for the Kmart site. Today this is a typical strip development that was built in the 1970s. There is a very large parking lot there, and Market Basket is

anchoring the site. There is almost 1500 linear frontage along Lafayette and a little over 400 parking spaces. The Kmart is 6800 square feet. The concept plan includes reconfiguring the Kmart into a neighborhood center. The entrance would be to a streetscape and have the buildings come right up to it to make it attractive for people to hang out. Parking would be located behind the buildings. The Market Basket side of the plaza would remain pretty much intact. There may be an opportunity to use some of the open buffer area for open space. These new buildings would be three-story buildings with business on the first level and residential above. The new areas of development would generate 92 new residential units, 74000 square feet of non-residential space, and 384 new parking spaces. The space would retain the 375 spaces that exist today on the other side of the lot. An alternative to this concept plan is to allow higher buildings and accommodate parking with a garage.

Ms. Begala requested Mr. Brovitz clarify how the parking spaces were calculated. Mr. Brovitz responded that they used a formula of 1.3 spaces per unit. The assumption is that people will have smaller units, so there will be fewer cars and/or shared cars.

Chairman Legg questioned what the potential number of units would be with taller buildings. Mr. Brovitz responded that basically another story would translate to another 12 units per building. Four story buildings would increase the units from 24 per building to 36, however there is currently a limit in the draft of 30 units per building.

Ms. Record asked if only three of the new buildings would have residences. Mr. Brovitz replied that all of the new buildings would have new residential units.

Ms. Begala asked what the dwelling unit bedroom size would be. Mr. Brovitz replied that the planning did not get that far into the detail. The team used an average of 1500 square feet per unit. If it's ownership units people generally want larger spaces, but workforce housing could be smaller. Ms. Begala stated that these housing options should appeal to all types of people, and asked if the public bus stops in that location. Ms. Walker confirmed that yes the bus goes behind Kmart today, and there is a bus stop right there.

City Council Representative Perkins asked based on the first floor being commercial then two stories above residential, what would the unit mix be like? What is the demand? Mr. Brovitz responded that he couldn't speak to the demand. The goal was to create a concept that provides many different options. There is a demand in other communities for smaller rental units. There are a lot of starter couples that get into these places, and a lot of people who are ready to downsize, but want to stay close to resources. Generally speaking there is demand for this type of living.

Mr. Brovitz introduced his partner Peter flaker with Dotson and Flaker.

Mr. Flaker introduced the second conceptual plan for the Community Church. The three-acre parcel is fairly narrow and wedged between Market Street and Chase Drive. The lot size is 250,000 square feet mostly within the church, and it is currently zoned Single Family B. There are 140 parking spaces today. This concept plan organized the lot into three buildings, and allows parking to be underneath the buildings. Parking below the buildings would allow the creation of open spaces for the public and residents to enjoy. Apartments would surround the parking lot with private gardens. There would be 84 new dwelling units and 114 parking spaces.

Ms. Begala questioned out of the 2.6 acres what percentage would be Public Park. Mr. Flaker responded that about 1/3 of the property would be Public Park. Mr. Brovitz added that again if the buildings went higher to create more units, then parking would be raised and so would the terraces.

Mr. Brovitz introduced the third concept plan site, the Frank Jones Center and its surrounding properties. There are nine properties on 18 acres. Hodgson Brook borders the edge of this area. Lafayette road creates a greater setback for this site.

Mr. Flaker The concept plan took some of the existing large parking lots and turned them into a park. The common theme is to create a sense of arrival into the neighborhood and enclose the public park with townhouses, parking and apartments on both ends. Then add mixed-use space where it's appropriate. The idea is to take what's there and keep what's best about it then improve the other areas. Retail would be on the street frontage. The busiest mixed-use spaces would be toward the front then mixed-use would continue into the middle of the site and residential would be toward the back. There would be 76 new dwelling units, 90,000 square feet of common space, and 250 parking spaces. There is potential to have higher density if there was a parking garage.

City Council Representative Perkins questioned if Mr. Flaker had an estimate under the increased density at how many more units there would be. Mr. Flaker responded that the units would increase by 50-75% depending on the height of the garage.

Chairman Legg commented that Mr. Brovitz and Mr. Flaker have worked with other communities on similar projects. In their opinion would these plans be attractive to developers and economically feasible. Mr. Flaker responded that if developers can acquire the land, the water and sewer is set up and materials are affordable then it's a matter of if they can rent for profit. There has been a boom in development where there are more jobs. It could go the other way too, though. Chairman Legg agreed and commented that's what the Board doesn't want to happen. Are there examples of mixed use development in that size in New England that have been developed successfully? Mr. Flaker confirmed there was. Mr. Brovitz added there are a series of case studies that are similar to this kind of development that can be provided.

Ms. Begala questioned what kind of businesses would go into the mixed-use spaces. Would they be small square footage for retail and corner shops etc.? Mr. Brovitz responded that anyone who is a retailer or restaurant would want visibility to be up front. Heading further into the back area could be more office and residential areas. There could be some live work units too. Ms. Begala commented that there is an entrance and exit on Lafayette, but is there another entrance and exit? Ms. Walker responded that the City has been proposing to add a Cate Street connector. The concept plan is designed to accommodate a different road layout.

Mr. Brovitz introduced the fourth concept plan for the Mirona Road area. There is a lot of different types of development in there today, retail upfront, then a series of plazas, and Market Basket is on the southern end. It is currently a mix of nice new development and older development that can be revamped. There are 23 properties, and 58 acres all together. A fair amount is in wetland and buffer. The zoning is on the edge of the industrial zoning. The properties that are in the area today don't meet the standards. The tall buildings won't be right on the edge of the street, but would be added further back.

Mr. Flaker commented that the plan is based on the assumption that the dealership would at some point have a financial benefit to be replaced with housing and mixed-use space. The north part of the site would take advantage of the views of the river. Housing would be fit in along the river in different ways. Attractive streetscapes would be added to include sidewalks and trees and facades. Apartments and/or mixed-use space would be located on the other side. There could be a cottage community in the area where there would not be a lot of parking available. A lot of the existing plaza would stay, but the McDonalds and some of the other buildings would be replaced with more attractive buildings. The advantage to having a large parking lot is the ability to set aside more lively space the public can enjoy. It may be difficult to get people to work together across lot lines, but the standards can help foster incentives. The leftover open spaces would allow for the creation of trails to let people walk around the developed area.

Vice Chairman Moreau asked if north of the site along the creek went into the buffer? Mr. Flaker responded that the idea is to not create new development in the buffer, but this would be replacing impervious space that is already in the buffer today.

Ms. Begala asked approximately how many units this concept plan would create. Mr. Flaker responded there would be a total of 194 units, 10,000 retail square feet and 500 parking spaces. Ms. Begala commented that the vision for the district is nice, but the reality is that it will be more than one developer working the site. What kind of timeframe would this be? 5 years? 10 years? Ms. Walker responded that is a good estimate. Mr. Flaker added that it depends on how far you take the planning process too. The further you can take the pre-planning process the more the developers will know what you want upfront.

Mr. Kisiel questioned why the existing properties on the bottom of the ledge weren't redeveloped in the concept plan. There could be an opportunity to build high there. Mr. Flaker agreed that could have been a missed opportunity. Mr. Brovitz added that this exercise was a demonstration of the variety of different types of development that could be done. They could not do every single parcel, but wanted to demonstrate a variety of different things for the Board to see.

Ms. Begala noted the concept plans would create a total of 446 units. The Housing study for 2014 tried to answer the question about what is the demand that needs to be met. The need turned out to be around 400 units, so these concept plans have met that need.

Mr. Brovitz commented that he will pass along the case studies to the members. Chairman Legg commented that they should be posted to the site for the public to see as well.

City Council Representative Perkins requested to see a streetscape view. Chairman Legg agreed that makes it very concrete to create an ordinance that will create attractive areas and get developers to actually want to develop them. Mr. Brovitz responded that character examples could certainly be added.

Chairman Legg commented that in the interest of time the Board Members should send feedback to Ms. Walker after the meeting. Ms. Walker added feedback would be incorporated and the most updated version would be available for next week's session. Everything will be posted online too.

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I. APPROVAL OF MINUTES

- 1. Approval of Minutes from the July 20, 2017 Planning Board Meeting;
- 2. Approval of Minutes from the July 27, 2017 Planning Board Work Session;

Vice Chairman Moreau moved to *approve both sets of minutes, seconded by Deputy City Manager Colbert-Puff. The motion passed unanimously.*

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II. DETERMINATIONS OF COMPLETENESS

A. SITE REVIEW

- 1. The application of **Deer Street Associates, Owner**, for property located at **165 Deer Street**, (“Lots 2 & 3”).

Mr. Kisiel abstained from the voting.

Vice Chairman Moreau moved to determine that the application for Site Plan approval is complete according to the Site Plan Regulations and to accept it for consideration, seconded by Deputy City Manager Colbert-Puff. The motion passed unanimously.

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B. SUBDIVISION

- 1. The application of **Andrew F. Cotrupi and Jennifer B. Cotrupi, Owners**, for property located at **137 Wibird Street**.

Deputy City Manager Colbert-Puff moved to determine that the application for subdivision approval is complete according to the Subdivision Rules and Regulations and to accept it for consideration, seconded by Mr. Gamester. The motion passed unanimously.

- 2. The application of **Society for the Preservation of New England Antiquities, Inc., Owner**, for property located at **364 Middle Street**, and the **C. Sue Mautz 2008 Trust, Owner, C. Sue Mautz, Trustee**, for property located at **338 Middle Street**.

This application was withdrawn.

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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 **Steven H. Lee, Owner**, for property located at **174 Dodge Avenue**, requesting Conditional Use Permit approval to create a two-story 1,000 ± s.f. garden cottage in an existing building, with associated paving, lighting, and utilities. Said property is shown on Assessor Map 258 as Lot 43 and lies within the Single Residence B (SRB) District.

Chairman Legg read the notice into the record.

SPEAKING TO THE APPLICATION

Steven Lee spoke to the application for a Conditional Use Permit of 174 Dodge Avenue. The building on the property that the owner wants to adapt is just over 1000 square feet. Because it is an existing building Mr. Lee requested to get an exception. The building was designed in the same style as the primary dwelling unit because the same builder built it. The site the building occupies is very isolated visually from nearby homes. It is set within natural landscaping which will remain post project. The exterior of the building will not be changed. All of the changes will be happening to the interior. The abutters will not be impacted. The conversion to the garden cottage will not result in elevated noise or parking congestion. Additionally, only one person will be occupying the dwelling. Mr. Lee noted that it was understood that no business should be run from the location other than what is allowed for home businesses. An addendum letter was written to further explain the modification of the cottage. The second floor attic would be converted to a bedroom and half bathroom. The present space on the first floor is an art studio and would continue to be an art studio post conversion. A full bathroom and a kitchen facility would also be added on the first level.

Vice Chairman Moreau asked for clarification if the owners plan was to continue to use the space or rent it out. Mr. Lee responded that it was not going to be rented out. Mr. Lee plans to live in it and rent out the primary house.

Chairman Legg asked if there was anything that prevented this unit from being partitioned on the first floor structurally. Mr. Lee responded that no it would be as a concession to the standard of the Planning Board. It would just be making the room smaller and less effective as a studio.

Ms. Begala asked if there would be a change of use. Mr. Lee commented there would be no change of use. The space is currently being used as a studio. Ms. Begala added that there would be the addition of a kitchen bathroom and bedroom doesn't that change the use of the unit? Mr. Lee responded that it would be adding functionality to what is already there.

Vice Chairman Moreau asked if it was considered to move the art studio to the attic and have all the dwelling pieces on the first floor. Mr. Lee responded that the attic space would be better suited for a bedroom because it's smaller. Vice Chairman Moreau asked why it wouldn't work as a studio. Wouldn't 266 square feet be enough? Mr. Lee responded that the art studio should be in the larger space to store equipment and supplies. The stairs would be inconvenient.

PUBLIC HEARING

John Kilroy, 25 Buckminster Way, spoke in opposition of this application. Mr. Kilroy stated that he would not oppose this application if it met the 600 square foot requirement. The Additional Dwelling Unit (ADU) is not meant to be a primary single dwelling. It is meant to be an accessory. Mr. Kilroy is concerned that there is not a maximum occupancy per bedroom. The City has just begun to issue ADU permits and has granted five. None of them have exceeded the maximum square footage. A large ADU could easily become a duplex. The applicant is asking for a square footage size that makes it as big as most single floor homes and is double the ADU limit. The septic system could be over capacity with the ADU addition. The current owner may only be using this as a single occupancy unit, but if the property changes hands the new owners would have free use to the ADU. Mr. Kilroy asked if the Board had the inspection file that shows the property has a two bedroom septic. Mr. Walker responded that the Board does not have that. Mr. Kilroy concluded that the Board should set a precedent.

Steven Lee, 174 Dodge Ave, responded to a few items that the previous speaker addressed. The primary house is 1600 square feet, so it is larger than the proposed ADU. A pre-existing building allows a little over 600 square feet, but a completely new structure is allowed around 700. Why is it that a building that is already there allowed a smaller footprint than a new one? Does the zoning ordinance say that only family members are allowed to live in this unit? Ms. Walker responded that the previous speaker was referring to the definition of a family. If the people are not related then it's a maximum of three people. Mr. Lee noted the assumption that the septic system for a two bedroom equates to accommodating three to four people.

Mr. Kilroy, 25 Buckminster Way, Added that the number of related family members who could live in the ADU is unlimited. There could be a maximum of three unrelated people with unlimited dependents. That is concerning.

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

DISCUSSION AND DECISION OF THE BOARD

Vice Chairman Moreau asked if the state was trying to iron out the septic requirements. Ms. Walker responded that she was not sure if that was in the works, but the planning staff is already talking about how to add this to the process. Ms. Walker will get back to Vice Chairman Moreau about the state process.

Ms. Walker clarified that in the ordinance right now a garden cottage is has a limit of 600 gross square feet. The Board needs to sort out what the livable are is. Ms. Record asked if the office would be classified as livable space. Ms. Walker responded that it does.

Deputy City Manager Colbert-Puff commented that an inspection would require the septic to be inspected. Ms. Walker responded that yes once this went to Inspection Department for final permitting then it would be addressed there. Chairman Legg noted that this would be caught today in an existing process. Ms. Walker clarified that this is a change of use permit not and addition, so it could slip by without that question being asked.

Vice Chairman Moreau asked if the Board could make it a stipulation. Ms. Walker confirmed that they could.

Vice Chairman Moreau requested to make a motion for the Board to vote to approve application, seconded by Mr. Gamester

Vice Chairman Moreau addressed the fact that there is concern that the ADU already looks like a principle dwelling unit. This is on a dead end street and has greenery around the unit, so it will be private. The Board does not want to set precedent for exceeding the max square footage.

Mr. Gamester reiterated that there is the balance to this. The application the Board heard last month had different factors that went into each to make exceptions.

Ms. Begala expressed hesitation because this may set a precedent. The Board is here to uphold the ordinance, so Ms. Begala disagreed with the motion.

Ms. Record agreed with Ms. Begala. This project would almost double what is allowed in the ordinance.

Deputy City Manager Colbert Puff recalled that when considering this during zoning discussions as a Board they talked about single-family zones and how it's different from the denser areas. Deputy City Manager Colbert Puff expressed hesitation to approve.

Assistant City Manager Moore identified with the last three comments and noted there is a process for making decisions like this that isn't through the accessory dwelling unit process. The Board needs to be thoughtful in making exceptions. There is quite a list of concerns that the Board wants to understand in more depth. It might be time to think about requesting more consideration of the big picture of what has been approved so far and the lessons learned. More technical review would catch site design or technical problems.

City Council Representative Perkins commented that she was inclined to agree with the motion because the Board is considering these applications on a case-by-case basis. Though there is opposition from the public; it is not the abutters. The Board should not be getting into such detail about what is going on inside the square footage they are talking about. This may need to be reworked. The applicant wants to rework their property and they can't control the size. City Council Representative Perkins did not think the board needed to stipulate 600 square feet.

Chairman Legg commented that he could not support over 1000 square feet for a couple reasons. This board was very conscious about coming up with the square footage limits. The proxy for density was that it was easier to administer a size limit than a density limit. There is nothing in this application that prevents putting a bedroom on the second floor and creating a 300 square foot kitchen on the first floor. The rest of the space could be art studio. Who's to say what this will be in the future if 1000 plus square feet is approved. If the trend for these applications is to approve going over the square footage then maybe occupancy limits needs to be reassessed. This is as proposed a separate residence. The applicant can accomplish what they want to and be true to the ordinance.

Assistant City Manager Moore requested clarification that if this application was denied they could still come back with the proper square footage. Chairman Legg confirmed that is correct.

Assistant City Manager Moore requested clarification on how to proceed. There is a motion on the table to grant approval for the application as it stands. It seems that the board may want to make an amendment to be more in line with the ordinance.

Vice Chairman Moreau withdrew the motion on the table. Mr. Gamester withdrew his second to the motion.

Assistant City Manager Moore moved to grant the conditional use permit as presented, seconded by City Council Representative Perkins with the following stipulations:

1. The garden cottage shall be partitioned to have a maximum gross floor area of 600 sq. ft. as allowed per the standards of the Zoning Ordinance.
2. In accordance with Sec. 10.815.50 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. 10.815, including the owner-occupancy requirement, and shall renew the certificate of use annually.
3. The applicant shall provide documentation that the property has adequate septic capacity for the accessory dwelling unit and that appropriate state permits have been secured.

Mr. Gamester commented that he is not going to accept that motion because limiting the square footage may limit the unit structurally. The 1000 square feet made sense because that was the whole space.

Mr. Kisiel, Vice Chairman Moreau and City Council Representative Perkins agreed with Mr. Gamester’s statement.

Chairman Legg noted that the Board should vote on this motion if it passes then it’s settled, and if not another motion could be considered.

Ms. Begala commented that the Board should be shown the reworked plans for the 600 square foot area.

Mr. Gamester commented that the Board couldn’t require the applicants to come back to the board once the application is approved.

The motion passed in a 5-4 vote.

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B. The application of **Merton Alan Investments, LLC, Owner**, for property located at **30 Cate Street**, requesting Amended Site Plan Approval to remove the 10 foot wide walkthroughs in the center of the two 8-unit buildings and move the units together; to provide a 20 foot wide separation between the 6-unit building to create two 3-unit buildings; and the revision of grading and utilities to accommodate the new building locations. Said property is shown on Assessors Map 165 as Lot 1 and lie within Character District 4-W (CD-4W).

Chairman Legg read the notice into the record.

This application was withdrawn.

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IV. PUBLIC HEARINGS – NEW 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 **Andrew F. Cotrupi and Jennifer B. Cotrupi, Owners**, for property located at **137 Wibird Street**, requesting Preliminary and Final Subdivision Approval to subdivide one lot into two lots as follows:

Proposed lot A having an area of 7,770 ± s.f. (0.18 acres) and 76’ of continuous street frontage on Wibird Street. 100’ of continuous street frontage on Lincoln Avenue; and
Proposed lot B having an area of 7,525 ± s.f. (0.17 acres) and 58.85’ of continuous street frontage on Lincoln Avenue.

Said property is shown on Assessor Map 134 as Lot 48 and lies within the General Residence A (GRA) District where the minimum lot area is 7,500 s.f. and the minimum continuous street frontage is 100’. (The Board of Adjustment granted a variance on August 16, 2016 to allow proposed Lot B to have 58.85 s.f. of continuous street frontage and to contain an accessory structure as a principal use.)

Chairman Legg read the notice into the record.

SPEAKING TO THE APPLICATION

Andrew Cotrupi spoke to the application. The Cotrupi’s have lived in Portsmouth since 1991. The application is to subdivide the property to build a new modest home on the property. A variance was granted for this application already. The Cotrupi’s have worked with an engineer and submitted three detailed plans of what the house could look like. The subdivision plans are sensitive to the neighbors. The goal is to leave all trees if possible. The setback has been staggered intentionally. The immediate neighbors who are most directly impacted are supportive of this project. One of the neighbors is currently renovating and the Cotrupi’s will be using same builders. This project is in compliance with all regulations. Alex Ross, Engineer, prepared the plans, and walked through them with the Board. The lot is currently configured as a big L shape. There is currently a driveway from Lincoln Street going back to an old carriage house. What’s being proposed is there would be a new lot line division to cut the L into two rectangles. A new driveway would be put in on Wibird Street and a curb cut would be relocated on Lincoln Street. New utilities will be set up on Lincoln Street for the new house. A drainage study was performed and 650 square feet of pervious pavers and an infiltration trench on the east side of the house will be put in. The architectural plans show the house will have a barn style look with a garage to the left. The proposed lot is actually larger than the direct neighboring lots. The application also includes a waiver letter. The existing lot is on the corner, so it would require 110 feet of frontage. This lot will only have 100 feet of frontage, so a waiver was attained for that. This application has gone through TAC and was recommended for Planning Board approval. The plans have incorporated all the TAC recommendations. The DPW wanted more information on the drainage valve, so a note has been added to clarify that. The curb areas and street repair are included in an outline to show how that would be accomplished. The driveway permit has not been added yet, but the applicants understand that it’s necessary. The driveway radius has been tightened up. The drain line

pipe size has been increased in size. The last comment from TAC was to depress the trench and move the pervious pavement closer to Lincoln Ave.

Assistant City Manager Moore asked if the applicants considered adding something new to the rear edge border between properties to screen the drive. Mr. Cotrupi responded that there would be a fence or a hedge line put in there to screen the driveway.

Ms. Begala asked for clarification about the garage location. Mr. Cotrupi clarified where the garage was on the plans.

Chairman Legg noted the building plan and the architectural plan showed different dimensions, and asked for clarification. Ms. Walker clarified that the Board was not actually required to approve the footprint. Chairman Legg responded that he was trying to clarify what the lot coverage was calculated on. Mr. Ross clarified the builder plan was correct, and noted the coverage would be 25%. Ms. Walker commented that the Board was not approving the architectural plan, but that can be clarified in the motion. The architectural plan is just a concept to visualize what could be built there. Chairman Legg clarified that this would get submitted for final approval at Inspections Department. Ms. Walker confirmed that is correct.

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

Vice Chairman Moreau moved to find that strict conformity would pose an unnecessary hardship to the applicant and waiver would not be contrary to the spirit and intent of the regulations and, therefore, to waive compliance with Section VI.2.B of the Subdivision Rules and Regulations requiring all lot dimensions to comply with the requirements of the Zoning Ordinance, seconded by Mr. Gamester.

Assistant City Manager Moore noted that it would be good to have discussion about waivers and asked Ms. Walker to describe the rationale behind the standard. Ms. Walker commented that the rationale is to make sure there's adequate setback for surrounding properties, and the way the applicant went about this addresses that standard. Assistant City Manager Moore agreed.

The motion passed unanimously.

Vice Chairman Moreau motioned to grant Preliminary and Final Subdivision Approval, seconded by Mr. Gamester with the following stipulations:

1. Lot numbers as determined by the Assessor shall be added to the final plat.
2. Property monuments shall be set as required by the Department of Public Works prior to the filing of the plat.
3. GIS data shall be provided to the Department of Public Works in the form as required by the City.
4. The final plat and Site Plan shall be recorded concurrently at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.

5. The applicant shall apply for a driveway permit for the proposed new driveway.

The Motion passed unanimously.

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B. The application of **Society for the Preservation of New England Antiquities, Inc., Owner**, for property located at **364 Middle Street**, and the **C. Sue Mautz 2008 Trust, Owner, C. Sue Mautz, Trustee**, for property located at **338 Middle Street**, requesting Preliminary and Final Subdivision Approval (Lot Line Revision) between two lots as follows:

- (1) Map 136, Lot 22 decreasing in area from 81,454 ± s.f. (1.87 acres) to 80,717 ± f. (1.8530 acres) with 211.91’ of continuous street frontage on Middle Street.
- (2) Map 136, Lot 23 increasing in area from 5,958 ± s.f. (0.1368 acres) to 6,695 ± s.f. (0.1537 acres) with 66.9’ of continuous street frontage on Middle Street.

Said lots lie within the Mixed Residential Office (MRO) District where the minimum lot area is 7,500 s.f. and the minimum continuous street frontage is 100’, and the Historic District.

Chairman Legg read the notice into the record.

SPEAKING TO THE APPLICATION

Acknowledged the Planning Department’s request to withdraw the application, no further action was taken by the Board.

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C. The application of **Karona, LLC, Owner**, for property located at **36 Artwill Avenue**, requesting Conditional Use Permit approval to create a one-bedroom 1,096 ± s.f. detached accessory dwelling unit on the second story of an existing (unfinished) garage, with associated paving, lighting, and utilities. Said property is shown on Assessor Map 229 as Lot 4 and lies within the Single Residence B (SRB) District.

Chairman Legg read the notice into the record.

SPEAKING TO THE APPLICATION

Tim Phoenix and Butch Richie spoke to the application. The lot is 26,737 square feet almost double the minimum lot size required for the zoning. The property is on a dead end road with two other properties on it. Mr. Phoenix presented letters from the two immediate abutters who wrote in support of the project. The former owner put up an accessory structure to the house. The accessory structure was built too big, and started to install an apartment before the ADU standards were defined. Karona LLC bought this property at foreclosure. The applicant would like to finish the garage and complete an ADU in the existing detached structure. The private street made it requirement to get a variance. That was submitted in June and was granted. Construction has been halted until the application gets through the approval process. The ADU was not completed by the former owner before the cease and desist was issued. The applicant is asking the Board to approve 1,096 square feet because the building already exists and is that size. The ADU at its closest point is a little over 10 feet to the primary building. The requirement is 20 feet. Since the building is already there at the 10 feet the applicant is

requesting approval for this. The ADU will be one bedroom. The requirement about one dwelling unit needs to be occupied by the owner will not be met. The applicant is asking the board to approve that only one of the units either primary unit or ADU can be occupied until it's sold and a primary unit owner moves in. No business is intended on this property. There is a three-car garage and spaces for main house. This is a dead end street so the noise levels and traffic would not be increased.

Vice Chairman Moreau noted that it looks like the existing dwelling shares a driveway with another property. Mr. Phoenix confirmed, yes it does.

Mr. Clark asked for clarification on the existing easement on the building. Mr. Phoenix responded that the former owner built the property right over the sewer line easement. Mr. Richie has dug a new trench and run the sewer around the building to relocate it. Mr. Richie confirmed that his attorneys are working to get the paperwork filed.

Mr. Clark commented that the architectural plans show a pretty big laundry room. It is unclear which version is final but could the stairs be pulled into the footprint of the laundry room? Mr. Richie responded that the problem is that would take away some garage space. The plans show it as a laundry space because it was within the confines of what was drawn. Mr. Phoenix added that the application is to get approval at the full size, but the plans can be scale back if needed.

Ms. Record asked for clarification about the statement made that the owner would not be living in either one of the buildings, but would be renting out only one of them. Mr. Phoenix responded that the primary house is currently being rented out, and will continue to be rented. Then when Mr. Richie sells the property the thought is that whoever buys would live in the primary residence, and the new owners would have the ADU to use.

Mr. Clark asked if the owner occupation requirement is recorded in the deed. Ms. Walker responded that it would be noted in the certificate of use that the Planning Board issues every year, and would need to be renewed every year. Mr. Clark questioned how a new owner would find this. Ms. Walker responded that the property owner would need to do their due diligence to see what has been approved in the past.

PUBLIC HEARING

Butch Richie owner of Karona LLC, has been building and developing in Portsmouth for almost 40 years. Mr. Richie knew there were issues in the home when it was purchased. Mr. Richie has done due diligence to bring the building up to code, and there is currently two tenants renting in the primary house. Mr. Richie has a good relationship with the two neighbors who approve of this proposed project. The sewer line was relocated, and has met with the city attorney and DPW to ensure water and sewer was correct. The neighbors would be the most impacted because they are the only ones who can see the home.

John Kilroy, 25 Buckminster Way, expressed the same concerns as the 174 Dodge Avenue application. The structure is not consistent with the neighborhood. The house can be seen from Jarvis Drive. Limiting the space to the proper square feet should not be a hardship for the owner. The direct abutters do not object, but this approval could set a precedence. The lot size is not large enough to qualify for the 1000 square feet the application is requesting. Changes to the ordinance should be made

intentionally through due process not through exceptions. Mr. Kilroy also expressed concerns about not having the owner living on premises.

Mr. Phoenix clarified that there was a demolish issue, but that has been suspended until this application has gone through this process.

John Kilroy, 25 Buckminster Way, commented that a Conditional Use Permit should not be issued without Conditional Occupancy.

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

DISCUSSION AND DECISION OF THE BOARD

Vice Chairman Moreau Voted to find that the application does not satisfy the requirements of 10.814.60, seconded by City Council Representative Perkins.

Vice Chairman Moreau commented that this could be built and sit empty for years. It would be hard to monitor that only one party is living in one of those units if the owner isn't living on property. This is asking the City to monitor this more. It would be adding a layer of complexity.

Ms. Begala agreed with Vice Chairman Moreau and expressed that the 750 square feet in the ordinance that should be met. The Board should not allow for some prospective units of homes that might be sold that would be beneficial at the point of sale but not useable now.

City Council Representative Perkins commented that this discussion is going over similar points that have been discussed before. It may be time to think about sliding scales for ADU's due to lot size. The owner does not have control over the lot size. City Council Representative Perkins was not concerned about the ownership because it would be clear in the purchase and sales and the market would want to see this.

Chairman Legg clarified that the motion on the table is that this does not satisfy the requirements.

The motion passed by a vote, 7 in favor, 2 opposed.

Vice Chairman Moreau motioned to deny the conditional use permit as presented motion to deny CPU, seconded by Deputy City Manager Colbert-Puff.

Chairman Legg stated that one of the purposes of this is to create new housing. The ADU's are supposed to be subordinate to the main house. Chairman Legg expressed that this should not turn into a duplex.

Mr. Gamester disagreed. In the last meeting each one was looked at on a case-by-case basis and evaluated in terms of the ordinance and how it's laid out in the memo. Some of the technical requirements weren't met, but the applicant went so far as to say they would create the dead space if necessary to make the footprint the required size. On the case-by-case basis Mr. Gamester approves of this.

Ms. Record agreed with Chairman Legg’s concern about creating a duplex.

The motion passed by a vote, 7 in favor, 2 opposed.

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D. The application of **Cristin Pugliese, Owner**, for property located at **5 Buckminster Way**, requesting Conditional Use Permit approval to create a two-story, two-bedroom 1,083 ± s.f. attached accessory dwelling unit in an existing building, with associated paving, lighting, and utilities. Said property is shown on Assessor Map 282 as Lot 6-23 and lies within the Single Residence A (SRA) District.

Chairman Legg read the notice into the record.

City Council Representative Perkins motioned to postpone until such a time as the Planning Department determines that this application satisfies the submission requirements and is ready for review by the Planning Board, seconded by Vice Chairman Moreau.

The motion passed unanimously.

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E. The application of **Goodman Family Real Estate Trust, Owner, and Aroma Joe’s Coffee, Applicant**, for property located at **1850 Woodbury Avenue**, requesting Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within the inland wetland buffer to construct a 785 ± s.f. restaurant/take-out building and 195 ± s.f. attached patio, with drive thru service and a walk –up window, with 6,870 ± s.f. of impact to the wetland buffer. Said property is shown on Assessor Map 239 as Lot 9 and lies within the General Business (BD) District.

Chairman Legg read the notice into the record.

City Council Representative Perkins motioned to postpone to the next regularly scheduled Planning Board meeting on September 21, 2017, seconded by Vice Chairman Moreau.

The motion passed unanimously.

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F. The application of **Deer Street Associates, Owner**, for property located at **165 Deer Street**, (“Lots 2 & 3”), requesting Site Plan Approval for creation of a temporary parking lot having 73 standard parking spaces and 3 handicap accessible parking spaces, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 125 as Lots 17 and 17-1 and lies within the within the CD5 District and the Downtown Overlay District (DOD).

Chairman Legg read the notice into the record.

SPEAKING TO THE APPLICATION

Mr. Kisiel recused himself.

John Chagnon and Maxwell Rogers spoke to the application. The application is to create a temporary surface parking lot on the 2 and 3 lots of the Deer Street Associates subdivision. The applicants have gotten approval through the zoning ordinance to use this as a temporary lot. The application has been through TAC, and the applicants have addressed all the comments. There have been signage improvements to delineate leased parking times and the hours of operation. The applicants do want to construct a building on the property, and will be putting in applications for that. This will be used as a temporary parking in the meantime. Mr. Chagnon read a letter from Avery Insurance in favor of the lot. They have recently lost parking and would like to be able to continue to park at the Deer Street Associates site. Losing the parking would create a hardship for the employees of Avery Insurance. Once the garage is built the employees will be able to park in the garage.

Vice Chairman Moreau requested clarification that the plan is to not have hourly public parking it will just be a leased lot. Mr. Chagnon confirmed that is correct. It would be monthly passes. There was indication at the TAC meeting that potential evening parking would be beneficial, but at this time there is no lighting. This could be a future consideration, but the applicant would need to evaluate cost.

Ms. Begala questioned if the applicants knew the approximate date to build the new public garage. Ms. Walker responded that the project has already started. Ms. Begala asked if the temporary lot would remain until the garage is completed. Mr. Chagnon responded that these projects are not related to the garage construction.

Mr. Clark noted that no drainage analysis was completed, but runoff is shown on the plans. Mr. Clark questioned where does that runoff go? Mr. Chagnon responded the runoff goes toward Foundry Place. The applicant has agreed to use this area for construction supplies lay down to slow the water down. The water will run out into the catch basins on Bridge Street.

Mr. Clark commented that the plan shows a depressed area in the back area near corner of the building, and questioned if this could be shimmed. Mr. Chagnon agreed that would be a good area to pay attention to when a shim is put in.

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

Vice Chairman Moreau moved to find that a waiver will not have the effect of nullifying the spirit and intent of the City's Master Plan or the Site Plan Review Regulations, seconded by Mr. Gamester to waive the following regulations:

- 1) Section 2.5.3 2(b):
 - Calculations relating to stormwater runoff;
 - Information on composition and quantity of water demand and wastewater generated;

- Information on air, water or land pollutants to be discharged, including standards, quantity, treatment and/or controls;
 - Estimates of traffic generation and counts pre- and post-construction;
 - Estimates of noise generation;
 - A Stormwater Management and Erosion Control Plan;
 - Endangered species and archaeological / historical studies;
 - Wetland and water body (coastal and inland) delineations;
 - Environmental impact studies.
- 2) Section 2.5.4 3:
- (i) Stormwater Management
 - (j) Outdoor Lighting
 - (k) Landscaping

The motion passed unanimously.

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

- 1) The temporary parking lot shall be in operation for no longer than 27 months from the date of the Planning Board approval.
- 2) The Site Plan (Sheet C2) shall be recorded at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.
- 3) The plan sheet(s) submitted for recording 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.
 - 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.”

The motion passed unanimously.

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V. ADJOURNMENT

It was moved, seconded, and passed unanimously to adjourn the meeting at 9:49 p.m.

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Respectfully Submitted,

Becky Frey,
Acting Secretary for the Planning Board

These minutes were approved at the September 21, 2017 Planning Board Meeting.