

## MINUTES

### PLANNING BOARD PORTSMOUTH, NEW HAMPSHIRE

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

7:00 PM

APRIL 18, 2019

**MEMBERS PRESENT:** Elizabeth Moreau, Vice-Chairman; Colby Gamester; Jay Leduc; John P. Bohenko, City Manager; Ray Pezzullo, Assistant City Engineer; Jeffrey Kisiel; Corey Clark, Alternate

**ALSO PRESENT:** Jillian Harris, Planner I

**MEMBERS ABSENT:** Dexter Legg, Chairman; Rebecca Perkins, City Council Representative; Jody Record, and Polly Henkel, Alternate

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### I. APPROVAL OF MINUTES

A. Approval of minutes from the March 21, 2019 Planning Board Meeting.

City Manager Bohenko moved to approve the minutes from the March 21, 2019 Planning Board Meeting, seconded by Mr. Gamester. The motion passed unanimously.

### II. DETERMINATIONS OF COMPLETENESS

#### A. SUBDIVISION REVIEW

1. The application of **Wayne & Kristin Ricciardi Barrow, Owners** and **James Verra, Applicant**, for property located at **55 Lafayette Road**, requesting Subdivision approval.

City Manager Bohenko moved to determine that the application is complete according to the Subdivision Regulations and to accept the application for consideration, seconded by Mr. Gamester. The motion passed unanimously.

#### B. SITE PLAN REVIEW

1. The application of **Islamic Society of the Seacoast Area, Owner**, for property located at **686 Maplewood Avenue**, requesting Site Plan approval

City Manager Bohenko moved to determine that the application is complete according to the Site Plan Review Regulations and to accept the application for consideration, seconded by Mr. Gamester. The motion passed unanimously.

### III. PUBLIC HEARINGS – OLD BUSINESS

City Manager Bohenko moved to hear New Business Item E first to postpone the application, seconded by Mr. Gamester. The motion passed unanimously.

- A. The application of **Thomas and Ann Taylor, Owners**, for property located at **43 Whidden Street**, requesting Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within the inland wetland buffer to install permeable pavers for two parking spaces and plantings, with 150  $\pm$  s.f. of impact to the wetland buffer. Said property is shown on Assessor Map 109, as Lot 2 and lies within the General Residence B (GRB) and Historic District. (This application was postponed at the November 15, 2018 Planning Board Meeting)

### **SPEAKING TO THE APPLICATION**

John Chagnon with Ambit Engineering spoke to the application. The application is for a CUP. The project will impact 431 square feet of the wetland buffer. The purpose is to create parking spaces. An area of the side yard will be excavated. It will be filled and a porous surface will go on top. This will allow the Taylors to park in a more efficient manner. The area is currently grass. There was a Shore Land Permit required for work outside of the 100-foot buffer, but in the 250-foot Shore Land Protection Zone. The project also required a wetland permit for work in the buffer. Both of those permits were approved. There is a recommendation for approval of this application with two stipulations. The first stipulation is to note that the porous pavers will not be sanded. That was a request from the Conservation Commission. That is included the plan tonight. The second stipulation was that any work in the City right of way would be permitted by DPW and City Council as applicable. Mr. Chagnon asked for specifics on that request. The Taylors included an under drain in the package that will be constructed under the porous pavement to ensure there is not an excess amount of water going to the abutters. That will drain onto Whidden St. There are plans for road improvements, which will include a City drain. In the future this drain will connect to that pipe. For now the drain will be daylighted. It is understood that they would need a permit for things in the City right of way. However, this could be seen as a utility and may not need City Council approval.

Mr. Pezzullo noted that silt fabric was added after consulting with the design engineer, and questioned if that would be an impervious liner. Mr. Chagnon responded that he did not anticipate that it would be an impermeable liner.

Vice Chairman Moreau requested clarification about the work in the City right of way and questioned if the drainpipe would come into the street. Mr. Chagnon responded that the drainpipe is on the southwest side of the property. It leaves the property at the right of way line and comes straight out to where the future connection of the pipe will be underground. For now it will turn to where the pavement ends. 50-60% of the work is temporary.

City Manager Bohenko commented that the City wants to be able to have the ability for Public Works to do what is needed to ensure everything is operation. The stipulation is not a burden. The recommendation is that the work needs to be approved by DPW and if needed by the City Council. The other option is to withdraw and do more research. Mr. Chagnon did not want to withdraw. City Manager Bohenko questioned if they talked to the DPW before the Planning Board meeting. Mr. Chagnon confirmed they had. The DPW responded to the Planning Department and that was their recommendation in the Staff Memo.

### **PUBLIC HEARING**

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

### **DISCUSSION AND DECISION OF THE BOARD**

City Manager Bohenko moved to grant the Conditional Use Permit, seconded by Mr. Pezzullo with the following stipulations:

1. The maintenance plan shall be updated to indicate that the porous paver driveway surface shall not be sanded.
2. Any work in the City's right-of-way shall be permitted by DPW and as needed by the City Council, as applicable.

The motion passed unanimously.

### **IV. PUBLIC HEARINGS – NEW BUSINESS**

- A. The application of Islamic Society of the Seacoast Area, Owner, for property located at 686 Maplewood Avenue, requesting a Conditional Use Permit in accordance with Section 10.674 of the Zoning Ordinance to construct a building for religious assembly within the Highway Noise Overlay District. Said property is shown on Assessor Map 220 as Lot 90 and lies within the Single Residence B (SRB) District.

Mr. Gamester moved to hear Public Hearings New Business Item A and Item B together and vote on them separately, seconded by City Manager Bohenko. The motion passed unanimously.

### **SPEAKING TO THE APPLICATION**

Chris Mulligan from Bosen and Associates, Doug Larosa from Ambit Engineering and Dr. Muhammed Abraham spoke to the application. Mr. Mulligan noted that there were two applications. For the CUP Mr. Mulligan believed they had satisfied the requirements of the zoning ordinance for the Highway Noise Overlay District. The Staff Memo agrees. The decibel levels indoors will be well below the limit with the double paned glass. For the exterior it is recommended that a row of trees be planted. This will exceed the requirements there. This project was before the Planning Board recently for a CUP for parking. It has been before the Board of Adjustment for variances. Mr. Larosa has been before TAC 3-4 times. They have received a positive recommendation from TAC and the Planning Department with a few conditions. Those conditions will be no problem to complete.

Doug Larosa from Ambit Engineering reviewed the site plan. The project is on a 1.4-acre lot. It slopes from the rear of the property to Maplewood Ave. There will be a 24-foot wide entrance road with a 5-foot wide sidewalk. It is a low impact development with a porous parking lot. There will be a row of parking in the front and the rest will be in the rear. There will be a basement classroom area that people can enter from the rear. The first floor entrance will be at grade and there will be a small mezzanine above. They have received a CUP to allow 60 spaces where 68 were required. The applicants worked with City Staff to come up with a design that met all zoning and site plan requirements. There were some comments from the outside review engineers about increasing the

low impact development on the site. There are two areas with filtration basins and a porous paver parking lot. This will reduce the rate of runoff and treat the majority of it. The project is serviced by underground electric, natural gas, City water and sewer. They have provided an acceptable landscape plan and lighting calculations. Mr. Larosa showed the building floor plans by each level.

Vice Chairman Moreau commented that one of the elevation plans was wrong. The right hand side of the building is labeled as the rear. That needs to be updated. Mr. Larosa confirmed that would be updated. Vice Chairman Moreau questioned if there was a maintenance plan for the porous parking area. Mr. Larosa confirmed that it was at the end of the drainage analysis. The porous parking area will be maintained by removing sediment.

Mr. Clark commented that the Board only got the drainage report itself, so they didn't get all the calculations for the drainage study. Mr. Larosa responded that it was under the second to last page of the drainage report. The porous pavement will be checked twice annually and swept and vacuumed as needed.

## **PUBLIC HEARING**

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

## **DISCUSSION AND DECISION OF THE BOARD**

City Manager Bohenko moved to find that the application satisfies the requirements of Section 10.674.40 of the Zoning Ordinance and to grant the Conditional Use Permit, seconded by Mr. Gamester. The motion passed unanimously.

- B. The application of Islamic Society of the Seacoast Area, Owner, for property located at 686 Maplewood Avenue, requesting Site Plan approval to construct a 2-story building for religious assembly with a footprint of 3,880 s.f. and Gross Floor Area of 5,333 s.f., with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 220 as Lot 90 and lies within the Single Residence B (SRB) District.

## **DISCUSSION AND DECISION OF THE BOARD**

City Manager Bohenko moved to grant the request, seconded by Mr. Gamester with the following stipulations to be completed prior to the issuance of a building permit:

1. The Site Plan shall be updated to include metes and bounds information.
2. The Site Plan shall be updated to include the note required by Section 2.5.4.2E of the Site Plan Review Regulations.
3. The Site Plan shall be recorded at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.
4. The Elevation Plan labeling shall be corrected as the right-side elevation was incorrectly labeled as "Rear."
5. The Stormwater Management Maintenance Plan shall be included as part of the official record.

The motion passed unanimously.

Mr. Clark commended the applicant and engineer. It was a challenging site and Mr. Clark appreciated the 15% increase on rainfall.

C. The application of Wayne & Kristin Ricciardi Barrow, Owners and James Verra, Applicant, for property located at 55 Lafayette Road, requesting Preliminary and Final Subdivision approval for a two lot subdivision as follows: the subject lot to be divided so that Lot 1 becomes 10,773 s.f. with 100 feet of street frontage on Lafayette Road and Lot 2 becomes 6,251 s.f. with 96+/- feet of street frontage on Lafayette Road. Said property is shown on Assessor Map 151 as Lot 10 and lies within the General Residence A (GRA) District and Historic District.

Mr. Gamester recused himself from the application.

### **SPEAKING TO THE APPLICATION**

James Verra represented the Barrows and spoke to the application. The application was a proposal for a lot subdivision. This configuration was created in 1948. They have received variances for frontage and area. A waiver is being requested for the side lot line. It enables the lot to be more conforming. There is also a waiver for underground utilities. The power lines are already overhead across the street.

Vice Chairman Moreau commented that they chose not to do a perpendicular line, and questioned if that was because it would make both lots non-conforming. Mr. Verra confirmed that was correct. It's 5 degrees off, but increases the area of the lot.

Owner Wayne Barrows added that recommendation was made at a review with the Planning Department. The initial design was to have the lot line straight. The City suggested to slant the line to increase the square footage of the lot. Vice Chairman Moreau questioned if they were planning to do anything with the exposed ledge. Mr. Verra responded that the landowner doesn't plan to build on it. They plan to sell it. Vice Chairman Moreau commented that she would not want to see any houses damaged because of the approved the lot. City Manager Bohenko added that there were procedures in place to prevent that. If the ledge were removed, then they would have to follow them.

### **PUBLIC HEARING**

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

### **DISCUSSION AND DECISION OF THE BOARD**

Vice Chairman Moreau noted that there were two waivers and a subdivision request that all needed to be voted on. The waivers needed at least 6 members to vote in favor to pass.

City Manager Bohenko 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 Subdivision Regulations, and to waive the following regulations, seconded by Mr. Leduc:

- a) Section 2.A - requiring side lines to be placed at right angles to straight street lines
- b) Section 9.A – underground electrical lines

The motion passed unanimously by a 7-0 vote.

City Manager Bohenko moved to grant Final Subdivision Approval, seconded by Mr. Pezzullo with the following stipulations:

- 2.1) Lot numbers as determined by the Assessor shall be added to the final plat.
- 2.2) Property monuments shall be set as required by the Department of Public Works prior to the filing of the plat.
- 2.3) GIS data shall be provided to the Department of Public Works in the form as required by the City.
- 2.4) The final plat shall be recorded at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.

The motion passed unanimously.

Mr. Pezzullo commented that they would need a DPW permit for a driveway and a utility permit to connect utilities.

- D. The application of Laurie Griffin, Owner, and Bernie Pelech, Applicant, for property located at 221 McKinley Road requesting a Conditional Use Permit in accordance with Section 10.814 of the Zoning Ordinance for a 480 sq. ft. Attached Accessory Dwelling Unit (AADU) in the basement of the existing home. Said property is shown on Assessor Map 251 as Lot 26 and lies within the Single Residence B (SRB) District.

## **SPEAKING TO THE APPLICATION**

Chris Mulligan from Bosen Associates spoke to the application. The request is for an AADU. This property has a history behind it. The prior owner renovated and finished the basement and put in a dwelling space without permits. There was enforcement action against the prior owner and the appropriate permits have been attained. The applicant is now seeking an AADU permit. There will be no exterior changes to the existing dwelling. There is sufficient off street parking including parking in the garage. It meets all required criteria for an accessory dwelling. There will be common ownership. The owner will occupy one of the units. Neither unit will be used for commercial purposes. Municipal sewer service will be provided to the property. An interior door was installed in between the landing stairs and the dwelling. The proposed dwelling is only 480 square feet so it fits that requirement. It will not be moved closer to the front of the lot line. It is compatible with the existing residence, and the work is already completed. They are just seeking permission to activate it. The open space will remain as is. There is one space in the existing garage and 3 cars can stack in the driveway. This is a modest increase and will have no negative impact in excessive noise or congestion.

Vice Chairman Moreau requested clarification on if the laundry and storage were part of AADU or not. Vice Chairman Moreau assumed that they were part of the principle dwelling unit space. Mr.

Mulligan responded that he believed the entire basement floor plan was the AADU. Vice Chairman Moreau responded that even excluding those rooms the AADU is over 480 square feet. It is 624 square feet. Mr. Mulligan responded that he believed that the Vice Chairman was correct. Vice Chairman Moreau commented that she was fine with it being 624 square feet, but just wanted to make sure it is clear. The laundry room could be common space for both units so it does not need to be counted in the AADU square footage. Ms. Harris confirmed that shared spaces and storage did not count in the square footage count.

Mr. Pezzullo questioned what the accessibility of the shared rooms was. Vice Chairman Moreau responded that they could make that a stipulation of the inspection to make sure it's appropriately shared.

## **PUBLIC HEARING**

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

## **DISCUSSION AND DECISION OF THE BOARD**

Mr. Gamester moved to find that the application satisfies the requirements of 10.814.60 of the Zoning Ordinance, seconded by Mr. Leduc. The motion passed unanimously.

Mr. Gamester moved to **grant** the conditional use permit as a 1-bedroom ADU no larger than the 750 square foot maximum with access to the shared storage and utility area, seconded by Mr. Leduc with the following stipulations:

- 2.1) In accordance with Sec. 10.814.90 of the Zoning Ordinance, the owner is required to obtain a certificate of use from the Planning Department verifying compliance with all standards of Section 10.814 of the Zoning Ordinance, including the owner-occupancy requirement, and shall renew the certificate of use annually.
- 2.2) Inspections Department to verify the shared/storage space in the basement is not exclusive to the ADU and is accessible from the primary dwelling unit.

The motion passed unanimously.

- E. The application of Wentworth-Gardner & Tobias Lear Houses Association, Owner, and Stephen M. Foster, Applicant, for property located at 49 Hunking Street requesting a Conditional Use Permit in accordance with Section 10.1112.14 of the Zoning Ordinance for provision of no on-site parking spaces where a minimum of three are required to operate an Inn. Said property is shown on Assessor Map 103 as Lot 39 and lies within the General Residence B (GRB) and Historic Districts.

Mr. Gamester moved to **postpone** the request to the May 16, 2019 Planning Board meeting, seconded by Mr. Clark. The motion passed unanimously.

## **V. CITY COUNCIL REFERRAL – PUBLIC HEARING**



A. Request for restoration of involuntarily merged lots at 27 Thaxter Road, Assessor Map 166, Lo t39.

Chris Mulligan from Bosen Associates spoke to the referral. The application and staff memo are very thorough. The request is to restore what was a Lot 46. The tax cards were submitted with the initial application. At one time it was a separate parcel. The Planning Department identified there were 3 separate lots. The recommendation is that the Planning Board refer this to the City Council and recommend that the three lots be restored. Zoning relief will be required to do anything with the lots in the future.

## **PUBLIC HEARING**

Debbie Jennings of 63 Thaxter Rd is an abutter. Ms. Jennings questioned which tax record and lot map the lots would go back to. Vice Chairman Moreau responded that the August 1933 map was the plan given in the Staff Memo. Ms. Jennings noted that Lot 46 was 50 feet wide. Ms. Jennings lives on Lot 47, which is 70 feet wide. Restoring Lot 46 will take away square footage from their lot. The 1933 lot does not depict the current Lot. Vice Chairman Moreau responded that there would need to be a survey done to evaluate everything. Ms. Jennings commented that there were a lot of mergers between 1933 and now. Vice Chairman Moreau noted that they would need to look into that. They are all one lot now. The Planning Board can recommend that there is more to be looked at. No final decisions will be made tonight. Vice Chairman Moreau could not answer the merger date questions, but the Planning Department could look at it. Mr. Leduc noted that Ms. Jennings concern was that she would be losing part of her property. Vice Chairman Moreau commented that Ms. Jennings would not lose any property because it's deeded to her. Mr. Leduc added that the City needed to do a lot of work to understand what the pre-merged state would be to ensure the abutting properties are not impacted.

City Manager Bohenko commented that if the Planning Board recommends this go forward there should be a stipulation that the Planning Department review this with the abutter Ms. Jennings to understand exactly what the concerns are before it goes to City Council. Ultimate approval will come from City Council. The Planning Board can't answer the question tonight, but Ms. Jennings can meet with Planning Department to work them out and include the concerns in a memorandum.

Mr. Leduc reiterated the Ms. Jennings property is protected.

Diane Share of 38 Thaxter Rd. lives across the street. Ms. Share has lived on the road for 47 years. The property owners on that end of Thaxter Rd. have always kept the land up beautifully. Ms. Share had no doubt that the neighborhood would improve with this change. Ms. Share looked forward to any plans the Planning Department had with that land.

Chris Mulligan from Bosen Associates addressed Ms. Jennings' concern. Ms. Jennings is absolutely correct Exhibit D established that Lot 46 had 50 feet of frontage, but is only shown with 30 feet of frontage. Part of Lot 46 was deeded over to the property she now owns. If the lots are restored it will not increase Lot 46 onto her property.

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

## **DISCUSSION AND DECISION OF THE BOARD**



Mr. Gamester moved to recommend that the City Council restore the lots with the stipulation that Planning Department Staff meet with the abutter Ms. Jennings to go over her concerns prior to this request being forwarded to the City Council, seconded by Mr. Leduc.

Mr. Gamester commented that the merging of the lots was an involuntary action by the City. They by right have the ability to unmerge them. There were three lots with 50 feet of frontage. Ms. Jennings' lot grew by 20 feet and the other lot decreased by 20 feet. Ms. Jennings' lot will not be impacted at all by the change, but it is good to be clear about what is going on.

Vice Chairman Moreau commented that once the lots are unmerged they could realign and merge the small one with another. They have to start from scratch.

The motion passed unanimously.

## **VI. ADJOURNMENT**

City Manager Bohenko moved to adjourn the meeting at 7:59 p.m., seconded by Mr. Gamester. The motion passed unanimously.

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Respectfully Submitted,  
Becky Frey,  
Acting Secretary for the Planning Board