

**PLANNING BOARD  
PORTSMOUTH, NEW HAMPSHIRE**

**Remote Meeting Via Zoom Conference Call**

Per NH RSA 91-A:2, III (b) the Chair has declared COVID-19 outbreak an emergency and has waived the requirement that a quorum be physically present at the meeting pursuant to the Governor's Executive Order 2020-04, Section 8, as extended by Executive Order 2020-5, and Executive Order #12, Section 3. Members will be participating remotely and will identify their location and any person present with them at that location. All votes will be by roll call.

**7:00 pm**

**JUNE 18, 2020**

**MINUTES**

**MEMBERS PRESENT:** Dexter Legg, Chair; Elizabeth Moreau, Vice Chair Karen Conard, City Manager; Peter Whelan, City Council Representative; Ray Pezzullo, Assistant City Engineer; Colby Gamester; Jay Leduc and Polly Henkel, Alternate

**ALSO PRESENT:** Juliet Walker, Planner Director; Jillian Harris, Planner I

**MEMBERS ABSENT:** Jeffrey Kisiel

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**I. APPROVAL OF MINUTES**

A. Approval of Minutes from the May 21, 2020 Planning Board Meeting

Mr. Gamester moved to approve the Minutes from the May 21, 2020 Planning Board Meeting, seconded by Ms. Record. The motion passed unanimously.

City Council Representative Whelan abstained from the vote because he was not at the May 21, 2020 meeting.

**II. PUBLIC HEARINGS – OLD BUSINESS**

**A. REQUEST TO POSTPONE** The application of the **Maud Hett Revocable Trust, Owner**, for property located on **Banfield Road** requesting Conditional Use Permit approval for an Open Space Planned Unit Development according to the requirements of Section 10.725 of the Zoning Ordinance and Site Plan Review approval for the construction of 22 single-family homes and a new road with related parking, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 256 Lot 02 and lies within the Single Residence A (SRA) District. **REQUEST TO POSTPONE**

Mr. Gamester moved to postpone this application, seconded by Ms. Record. The motion passed unanimously.

- B. REQUEST TO POSTPONE** The application of **Richard Fusegni, Owner**, for property located at **1574 Woodbury Avenue** requesting a Conditional Use Permit for a drive-through facility in accordance with Section 10.440 (19.40) of the Zoning Ordinance and Site Plan Review Approval for the construction of a new retail bank with parking, utilities, landscaping, lighting, drainage and associated site improvements. Said property is shown on Assessor Map 238 Lot 17 and lies within the Gateway Neighborhood Mixed Use Corridor (G1) District. **REQUEST TO POSTPONE**

City Council Representative Whelan moved to postpone this application, seconded by Ms. Record. The motion passed unanimously.

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

- A.** The application of **Charles & Allison Dudas, Owners**, for property located at **32 Monteith Street** requesting a wetland conditional use permit in accordance with Section 10.1017 of the Zoning Ordinance to remove an existing garage and shed and add a new garage of 657 square feet, a new addition of 495 square feet and a new deck of 285 square feet. Overall this application represents a reduction of impervious surface in the wetland buffer from 2,228 to 2,152 square feet. Said property is shown on Assessor Map 143 Lot 22 and lies within the General Residence A (GRA) District.

#### **SPEAKING TO THE APPLICATION**

Chuck Dudas spoke to the application. The proposal is to put in a two-story addition with a deck off the side of the house. The driveway will be relocated to the other side of the house. The existing garage will be demolished, and a new garage and breezeway will be added on. The shed will also be relocated. The property is adjacent to the North Mill Pond, so the majority of the property is within the 100-foot buffer. The majority of the work is in the buffer as well. Mr. Dudas met with the Conservation Commission, who recommended approval with a couple of stipulations. They recommended adding rain barrels, planting in the buffer zone and protecting an existing tree. The plans have been updated to include those stipulations.

Mr. Pezzullo requested clarification about the sewer connection to the house and questioned if it was a private forced main. Mr. Dudas responded that there is a concrete tank off the northwest side of the house where the sewer runs from the house to the tank. Then there is a sewer ejector to pump it along the property line and it connects to the City's system on Thornton St. Mr. Pezzullo commented that the sewer should be shown on the plan. If the forced main is under the proposed garage, then it could be problematic. The tank may not be strong enough to accommodate a vehicle on the driveway. Mr. Dudas responded that the pipe does go under the garage. They have reached out to the engineer to

review the tank to identify the strength. The pipe forced main runs between the shed and the house. The plan would be to relocate the forced main, so it would run beside garage in the 10-foot setback. If the tank needs to be relocated, then it can be relocated in the setback as well. They will stay out of the buffer. Mr. Pezzullo confirmed that would be fine. Chairman Legg noted that it should be added as a stipulation to verify the existing tank can handle the load of a car or be modified to handle the load and if not then it should be relocated.

Vice Chairman Moreau noted that the shed was being relocated but would still be in the buffer and questioned if it could be out of the buffer. Mr. Dudas responded that the lot is a little unusually shaped. Part of this challenge was to figure out how to use the part of the property that abuts Thornton St. They plan to use it as a garden and moving shed into that area would make it less functional.

## **PUBLIC HEARING**

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

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

Vice Chairman Moreau moved to **grant** this request, seconded by Mr. Leduc with the following stipulations:

- 1) The applicant shall provide overflow capacity for the proposed rain barrels such as a stone infiltration trench, French drain or dry well;
- 2) The applicant shall move buffer plantings to an area in the lawn on the top of the bank;
- 3) The applicant shall use silviculture best practices in protecting the existing Ash tree and its roots; and,
- 4) The residential force main shall be relocated to the side yard so that the new garage and driveway is not placed over the private force main line;
- 5) A qualified engineer shall inspect the sewer holding tank/pump chamber and tank access cover located within the proposed driveway to determine if the tank and cover meet NHDES septic tank design requirements for vehicular loading. If found unsuitable, applicant will work with City staff to identify an appropriate alternative solution.

Vice Chairman Moreau commented that it is a very odd shaped lot that already has structure on it already. The proposal is as far away from the water as possible for the buildable area. Moving the driveway further outside the buffer is good. They have done the best they can with what they have.

The motion passed unanimously.

- B. The application of the **Nikolas Uhlin Revocable Trust, Owner**, for property located at **375 FW Hartford Drive** requesting a wetland conditional use permit in accordance with Section 10.1017 of the Zoning Ordinance to install a shed with 200 square feet of impact completely within the wetland buffer. Said property is shown on Assessor Map 270 Lot 14 and lies within the Single Residence B (SRB) District.

#### **SPEAKING TO THE APPLICATION**

Nikolas Uhler spoke to the application. The proposal is to install a 200-sf shed in the back yard. The Woodland neighborhood has a large natural wetland in the center of the residential lot area. Mr. Uhler's house backs up to that wetland. The proposed shed will go in an existing grass area in the buffer. This proposal was presented to the Conservation Commission. The plan is to install it on helicon piers with a crushed stone drip edge. The impact to the land will be minimal.

#### **PUBLIC HEARING**

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

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

Vice Chairman Moreau moved to **grant** this request, seconded by Mr. Gamester with the following stipulations:

- 1) The applicant shall install a crushed stone drip edge around the perimeter of the shed.
- 2) Additional plantings shall be placed in the area between the wetland buffer and rain garden.

The motion passed unanimously.

- C. The application of **Ryan & Adrienne Cress, Owners**, and the **City of Portsmouth, Applicant**, for property located at **185 Edmond Avenue** requesting a wetland conditional use permit in accordance with Section 10.1017 of the Zoning Ordinance to replace a culvert on city property and install drainage on an abutting private property. The wetland buffer impact on 185 Edmond Avenue is 1,375 square feet and on the abutting City property is 150 square feet. All of the wetland buffer impact is temporary disturbance. Said property is shown on Assessor Map 220 Lot 56 and lies within the Single Residence B (SRB) District.

#### **SPEAKING TO THE APPLICATION**

Dave Desfosses represented the City and spoke to the application. There is an existing culvert that has an angle under Edmonds Ave and was constructed by the state of NH. The house was constructed and parties unknown extended the culvert with a corrugated pipe. Where the pipes join is routinely clogged and a maintenance issue. It drains to a large wetland. The proposal is to replace the 36-inch corrugated

pipe with a new piece of pipe in the same spot and put in a manhole at the intersection. In return for the easement the Cress's have asked for some drainage installed for them. They will pick up the gutter flow off the roof. There will be no increase in flow. There will be 150 sf of temporary impacts on the City parcel and 1,375 sf of temporary impact on the Cress's land. The plan is to put in the structure pipe, drainage and manhole and restore the area as is.

### **PUBLIC HEARING**

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

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

Ms. Record moved to grant this request as presented, seconded by City Manager Conard. The motion passed unanimously.

- D. The application of **Jonathan & Elizabeth Weeks, Owners**, of property located at **480 FW Hartford Drive** requesting a wetland conditional use permit in accordance with Section 10.1017 of the Zoning Ordinance to replace a rotting deck with a larger deck and new stairs with an overall impact of 378 square feet in the wetland buffer. The project will include crushed stone under the deck for stormwater infiltration. Said property is shown on Assessor Map 249 Lot 15 and lies within the Single Residence B (SRB) District.

### **SPEAKING TO THE APPLICATION**

Corey Colwell spoke to the application. The applicant has single family home within the Woodland subdivision located in the Single Residence B District. The house is 1.5 stories with a 2-car garage and 2 wooden decks. The 100-foot buffer goes through the deck. The lot is half wooded and half open yard. The existing deck and stairs need to be replaced due to age and water damage. Storm water is currently pooling on the deck. The proposal is to expand the deck and put in two new stairs. The proposed deck would be 30' by 12'. There will be crushed stone beneath the deck, and it will be composite decking with ¼ inch gaps. The existing open space is 81.9% and the proposed open space will be 80.6%. The deck will be built over existing lawn with an infiltration basin. The closest point will be 88 feet from the wetland. Abutters support letters were included the packet. The proposal was presented to the Conservation Commission. They voted in favor with the stipulations to create a landscape buffer off the back of the deck and put in erosion control measures. Those will be incorporated.

### **PUBLIC HEARING**

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

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

Mr. Clark moved to **grant** this request, seconded by Vice Chairman Moreau with the following stipulations:

1. That native buffer vegetation is planted close to the new deck between the deck and the wetland area.
2. That erosion control measures are put in place before the project commences.

The motion passed unanimously.

## **IV. OTHER**

- A. The request of **ADL Portsmouth Residence Trust, Owner** for property located at **325 Little Harbor Road** for a 1-year extension of the Conditional Use Permit for the conversion of an existing accessory structure into a Detached Accessory Dwelling Unit that was granted on June 20, 2019.

Ms. Henkel recused herself from this application.

Mr. Gamester moved to **grant** this request with the extension to expire on June 20, 2021, seconded by Ms. Record. The motion passed unanimously.

## **V. CITY COUNCIL REFERRALS**

- A. Portsmouth Housing Authority – Release of Reverter

John Bosen spoke to the change. The Board is familiar with the project from last year. There is a minor loose end with one of the deeds to the Feaster apartment building. The memo includes the detailed information. The Feaster apartment building sits on land owned by the Portsmouth Housing Authority and comes from two source deeds. One deed from the city of Portsmouth contains a condition that if the PHA stops using the property for elderly housing the land would revert back to the City. It makes sense to have a reverter to prevent them from selling the property. That is the intent of the clause. The PHA is trying to expand with 64 WFH units. Part of the approval included a lot line relocation to preserve the historic home on Court St. They are trying to execute the lot line relocation plan. There are 2 slivers of land that are 829 sf and are essentially subject to the reverter. They need them released from the reverter clause. The Board should be mindful that in return 3,302 sf of the land will be added to the existing land and will be subject to the reverter. They are continuing to preserve the elderly housing and adding 64 WFH units.

Mr. Gamester agreed with Mr. Bosen and noted that it seemed like a simple request, and questioned why City Council referred it to the Planning Board. City Council Representative Whelan responded that there was concern that the reverter was being taken off the whole property. Mr. Bosen confirmed that concern had been addressed. City Council Representative Whelan agreed that everything looked in order.

Chairman Legg commented that the reverter for the 3,302 sf of the PHA property would not be for elderly housing but for WFH. Mr. Bosen responded that the land is joining land the PHA already owns. Chairman Legg commented that means it is one unit regardless. Mr. Bosen responded that there were two source deeds for the Feaster apartments. It is fair to say that it is all one land acquired as part of the lot line revision.

Chairman Legg asked City Attorney Sullivan if this protected the City's interest in the property and kept the reverter intact. Attorney Sullivan responded that if this moves forward to City Council and they authorize the action, then it needs to be accomplished by means of a deed. Attorney Sullivan has reviewed this with the Planning Department to make certain everything is in order.

City Council Representative Whelan moved to recommend approval to the City Council, seconded by Ms. Record. The motion passed unanimously.

Vice Chairman Moreau commented that in the end the City is benefiting with additional land being added to a larger parcel. It is a good trade.

City Council Representative Whelan commented that this will protect the property given to the City to build for elderly housing. This deed change protects that moving forward. Chairman Legg agreed and noted that it was worth it to get it right.

City Manager Conard moved to review Items B and C together and vote on them separately, seconded by Vice Chairman Moreau. The motion passed unanimously.

**B. Request for Release of Interest in Paper Street -- 276 Dennett Street**

Ms. Walker commented that these are requests from the two properties that abut Ruth St. which is a paper street. That means it exists only on paper. A portion of the paper street is used as a driveway. The request is to release any City interest in the paper street to the center line of the road for these two properties. In cases like this the City relies on the due diligence of the people acquiring the interest. The City does not do thorough research to determine if they have interest. The recommendation is to release if there is no reason to retain interest. The City does a review to see if the paper street is in the right of way or has utilities going through it. The DPW has reviewed it. Legal does cursory review. The recommendation is to recommend that City Council release this paper street.

Chairman Legg questioned if there were any concerns about this. Attorney Sullivan responded that what Ms. Walker said was correct. The resolution of paper street issues can be very complex and cost a lot of time and money. The policy is that the City will do that work if there is a reason for the City to want to hang onto the paper street. Unless the Planning Board or City Council finds a reason why the City should go through the research efforts then the recommendation is to release the City interest.

City Council Representative Whelan commented that the map shows a lot without a house at the end of the cul de sac and questioned if that would not have access to a street if they released interest. Attorney Sullivan responded that the City can release interest, but the lot would still have interest. Ms. Walker clarified that they were not releasing that part of the street. It was the lots that intersect on Dennet St.

Vice Chairman Moreau moved to recommend that the Council release any interest, seconded by City Manager Conard. The motion passed unanimously.

C. Request for Release of Interest in Paper Street -- 294 Dennett Street

Vice Chairman Moreau moved to recommend that the Council release any interest, seconded by Mr. Gamester. The motion passed unanimously.

V. ADJOURNMENT

Vice Chairman Moreau moved to adjourn the meeting at 8:05 p.m., seconded by Mr. Gamester. The motion passed unanimously

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Respectfully submitted,

Becky Frey,  
Acting Secretary for the Planning Board