

**MINUTES
OF
REGULAR MEETING**

**PLANNING BOARD
PORTSMOUTH, NEW HAMPSHIRE**

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

7:00 P.M.

MARCH 19, 2009

MEMBERS PRESENT: John Ricci, Chairman; M. Christine Dwyer, City Council Representative; Paige Roberts, Vice Chairman; Donald Coker; Anthony Coviello; John Rice; Anthony Blenkinsop; Richard A. Hopley, Building Inspector; and MaryLiz Geffert, Alternate and Norman Patenaude, Alternate

MEMBERS EXCUSED: Cindy Hayden, Deputy City Manager

ALSO PRESENT: David M. Holden, Planning Director; Lucy Tillman, Chief Planner

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I. APPROVAL OF MINUTES

1. Approval of Minutes from the February 12, 2009 Planning Board Meeting – Unanimously approved.
2. Approval of Minutes from the February 19, 2009 Planning Board Meeting – Unanimously approved.
3. Approval of Minutes from the February 26, 2009 Planning Board Work Session – Unanimously approved;

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II. PUBLIC HEARINGS

A. The application of **Catherine R. Whelan, Owner**, of property located at **660 Middle Street** wherein Preliminary and Final Subdivision Approval is requested to subdivide one lot into three lots with the following: Proposed Lot 1 having 16,377 ± s.f. (.38 ± acres) and 70' ± of street frontage on Middle Street; Proposed Lot 2 having 21,124 ± s.f. (.48 ± acres) and 108' off of a right of way; and Proposed Lot 3 having 21,268 ± s.f.(.49 ± acres) and 114' off of a right of way; and lying in a zone where a minimum lot area of 7,500 s.f. and 100' of continuous street frontage is required. Said property is shown on Assessor Plan 147 as Lot 19 and lies within a General Residence A (GRA) District and Historic District A; *(The Board action in this matter 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.)*

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Attorney Bernard Pelech was present on behalf of Dr. Gaudet and Ms. Whalen, owners of the property. This is their third time before the Board with this plan. In August 2008 they appeared before the BOA and were granted a variance regarding the status of Chevrolet Avenue. The BOA agreed to grant a variance for the existing lot to have 70' on Middle and the other two lots to have frontage on Chevrolet Avenue. The BOA stated that creating three lots will not change the character of the neighborhood or affect the public interest, the front property line for lot 1 predates zoning and there is no way to reconfigure the lot to achieve the required frontage, the spirit of the ordinance is to control overdevelopment off a dirt path, but the paved right of way to lots 2 and 3 has functioned, and been maintained, as a street and can support two houses with a common driveway, there is no benefit to the public in denying the variance that would outweigh the hardship on the property owner and the property values will not diminish and the project has the support of the immediate abutters. They were present seeking preliminary approval and they understand the plan needs to have metes and bounds added to it. They have worked with DPW and they are proposing a common driveway to serve both lots and they intend to maintain a 20' vegetative buffer along the left side as specified by the BOA. They would like to maintain a heavily vegetated area along Chevrolet Avenue along the driveway. This may mean cutting more vegetation but they can line the driveway up exactly with the Malt House driveway or leave it as proposed and not have to cut some of the large evergreen trees.

Mr. Hopley asked why the driveway was coming from the far extreme of lot 3 if it is serving lot 2? Attorney Pelech explained there is an existing gate there now. He handed out an aerial photo showing a large area of trees that they would prefer not to cut. The applicants plan to build a smaller house on one of the lots and reside there. Mr. Hopley asked if the common driveway will have a common easement? Attorney Pelech confirmed it would and it will be shown on the final subdivision plan and the utilities servicing lot 2 would probably go under that driveway.

Mr. Coker asked about the status of Chevrolet Avenue. Mr. Holden referred him to the Department Memo which addresses that. They are treating this section of Chevrolet Avenue as a City street. They met with the Legal Department and reviewed this at great length. There is no issue for this lot although there may be an issue with additional lots off this street. Because of the history of this street they want to make sure the property line is shown at the center of the street and that will be looked at. They do not currently have the metes and bounds to make that determination.

Mr. Coker asked if they have the support of the neighbors in writing? Attorney Pelech indicated that they do not but they had it at the BOA meeting. They were granted a variance by the BOA to have their frontage on a right of way if this was not a City street.

Mr. Coviello asked why they the driveway was placed the way it is. Mr. Holden responded that normally they would set it up as an intersection but this is minor enough to not matter. DPW will review it and Mr. Holden did not see it as a concern.

Mr. Blenkinsop referred to proposed lot 2 and asked if the 30' private right of way was by agreement? Attorney Pelech indicated that that dates back to the Frank Jones Brewery in the late 1800's. At that time the two property owners agreed to grant each other rights of way of that 30' strip of land between their fences and what the City now calls Chevrolet Avenue. When the Malt House Exchange was built, the idea came up to connect Chevrolet Avenue and Plaza 800 and an agreement was worked out to make that happen. When the City sold the DPW land to Mr. Weinstein, they reserved a right of way for a future public roadway over that strip of land. Mr. Holden also pointed out, as a point of interest, that this was also where the Frank Jones railroad turntable was located.

Councilor Dwyer was thinking about how things will change in the area with the condominiums and the Islington Street study and she doesn't know if there will be parking in the larger lot so that is

potentially going to become a much busier street. Where the curb cut is and where it lines up will be a very important issue.

Chairman Ricci asked if they are proposing that the sewer manhole stay private and will that need an easement? Attorney Pelech explained that the abutter has a private sewer line that runs across her property and this property and ties in closer to Cass Street. They are proposing to put in two sewer manholes and they will probably remain private.

Ms. Geffert asked if the City wanted to put a sidewalk along Chevrolet Avenue, although she wasn't sure where the right of way was. Mr. Holden indicated that is one reason they hoped to have the final plat in front of them. The resolution they have for the Board is that in this area it is deemed to be a City street. Normally they would not have a subdivision of one or two lots putting in a sidewalk but they might see it as a future capital plan. Ms. Geffert asked if they would ask for more definition of that and the driveway on the final plat? Mr. Holden felt that should be part of it.

Mr. Coker asked what the logic of a shared driveway was? Attorney Pelech stated it was to preserve the large evergreen trees.

The Chair asked if anyone else 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. Coviello wanted to know the appropriateness of having a stipulation showing the curbcut for the driveway on the final plat. He felt that the curbcut should occur more on lot 2 rather than lot 3. Mr. Holden recommended that he add a stipulation that DPW review this for the issuance of the curbcut. That way he will know that if they approve it in that location it meets their standards and if they want to recommend something else, we can met and discuss it with the applicant.

Mr. Coviello made a motion for preliminary subdivision approval with all five stipulations of the department and that the applicant work with DPW to show an appropriate curbcut on the plan for the driveway.

Ms. Geffert seconded the motion and added a stipulation that they elaborate on the driveway to show how it cuts across the lots and also better delineation of the street and sidewalk possibilities.

Mr. Rice was concerned about lots that have shared driveways as they do not have the same value as lots that do not have shared driveways. He understands the concern to save the trees but for City tax revenues maybe they should consider creating two driveways. Chairman Ricci felt there was an inherent value by leaving the vegetation also. Mr. Holden stated that the Master Plan and Subdivision Regulations encourage shared driveways for street access.

The motion to grant Preliminary Subdivision approval passed unanimously with the following stipulations:

1. That the applicant shall work with DPW to show an appropriate curbcut on the plan for the driveway;
2. That the applicant shall elaborate on the plan to show how the driveway cuts across the lots as well as better delineation of the street and sidewalk possibilities;
3. That a conforming Final Subdivision Plat shall be submitted for the Planning Board's review;
4. That the Legal and Planning departments shall review the boundary line as it relates to Cheverolet Avenue so as to determine its accuracy and if an issue should be identified that it will be brought back to the Board for consideration;

- 5. That the final plat and all resulting deeds shall be filed concurrently at the Registry of Deeds by the City or as deemed appropriate by this department;
- 6. That property monuments as required by DPW shall be set prior to the filing of the plat; and,
- 7. That GIS data shall be provided to DPW in the form as required by the City.

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B. The application of **Charles E. Cogswell and Ronald C.J. Cogswell, co-Trustees of the Eva L. J. Cogswell Family Trust, Owners**, of property located at **370 Meadow Road** and **Charles E. Cogswell and Ronald C.J. Cogswell, Trustees of the Charles E. Cogswell Revocable InterVivos Trust, Owners**, for property located at **73 Rockingham Avenue**, wherein Preliminary and Final Subdivision Approval (Lot Line Revision) is requested between two lots having the following: Lot 19 as shown on Assessor Plan 236 increasing in area from 5,000 ± s.f. to 6,852 ± s.f. and continuous street frontage increasing from 50' to 78.36' and Lot 19A as shown on Assessor Plan 236 decreasing in area from 23,838 ± s.f. to 21,986 ± s.f. and continuance street front remaining at 180' ±, and lying in a district where a minimum lot area of 15,000 s.f. and 100' of continuous street frontage is required. Said properties are located in a Single Residence B District and are shown on Assessor Plan 236 as Lots 19 and 19A. *(The Board action in this matter 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).*

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Attorney Charles Griffin appeared on behalf of Charles and Ronald Cogswell, co-trustees of the family trust. This is a lot line adjustment. A major portion of the parking lot for one lot is actually on the other lot and the same family owns both lots. The Rockingham Avenue lot is a prior non conforming lot with a duplex on it. Under the new plan its area would be increased and its frontage would also increase and the new lot would meet the rear lot setback. The Meadow Road lot will still remain conforming. The irregular lot lines arise to make the Meadow Road lot comply with the rear lot line. This would allow what physically exists to become legal. Attorney Griffin asked for preliminary and final approval.

Mr. Coker asked for clarification on the Department's comments regarding the shape of the common boundaries. Mr. Holden indicated that this is an unusual lot configuration and would not normally be approved yet for the benefits of making the lot more conforming.

The Chair asked if anyone else 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. Coviello made a motion to grant Preliminary and Final Subdivision approval with the three Department stipulations. Mr. Blenkinsop seconded the motion.

The motion to grant Preliminary and Final Subdivision approval passed unanimously with the following stipulations:

- 1. That the final plat and all resulting deeds shall be filed concurrently at the Registry of Deeds by the City or as deemed appropriate by this department;
- 2. That property monuments as required by DPW shall be set, prior to the filing of the plat; and,
- 3. That GIS data shall be provided to DPW in the form as required by the City.

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C. The application of **Public Service of New Hampshire, Owner**, for property located in the **PSNH Right of Way at Griffin Road**, wherein a Conditional Use Permit is requested as allowed in Article VI, Section 10-608(B) of the *Zoning Ordinance* for the removal of five (5) existing utility poles and the construction of two (2) new utility poles, all within an Inland Wetlands Protection District. Said property is shown on Assessor Plan 259 as Lot 1, Assessor Plan 263 as Lot 1-1 and Assessor Plan 165 as Lot 14 and lie within the Industrial and Municipal Districts; *(The Board action in this matter 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).*

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Patrick Crimmins, of Appledore Engineering, appeared on behalf of Public Service of New Hampshire. He confirmed that they had met with the Conservation Commission on March 11th and received a unanimous recommendation of approval. The project is located on a right of way and 8 poles will be removed and 8 poles will be constructed. There are three existing poles with two switches and one switch does not work. They propose to relocate the switches along Griffin Road so they can access them. They are removing 5 utility poles and constructing 1 new pole inside the inland wetland district. Within the 100' buffer they are removing 1 and constructing 1 new pole. They are also proposing 776 s.f. of wetland impacts and that is a separate permit to NHDES.

Mr. Coviello asked about the note on the plan that said "temporary wetland"? Mr. Crimmins explained that in order to access the poles, the three yellow areas are temporary impacts. They will access within the existing right of way via trucks on a temporary access route. The vegetation will be cut by hand and mats will be placed on top and then they will be removed after they are done. It is a temporary impact.

The Chair asked if anyone else 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. Holden confirmed that they have a report from the City Engineer, David Allen. He indicates his approval of this project.

Mr. Rice made a motion to approve Conditional Use without any stipulations. Mr. Blenkinsop seconded the motion.

The motion to grant Conditional Use approval passed unanimously.

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D. The application of **Ocean Properties, Ltd, Applicant**, for property located at **1 International Drive**, wherein Site Review approval is requested to construct a 72,000 s.f. 4-story office building, with related paving, utilities, lighting, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 303 as Lot 2 and lies within the Airport/Business Commercial district; *(The Board action in this matter 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).*

David Holden advised the Board that the TAC meeting raised an issue of where the town boundary is between Portsmouth and Newington. A perambulation was done and Newington feels there may be a discrepancy in the Site Plan. They are working on that so Ocean Properties has requested that this be postponed to the April Meeting.

Mr. Coker made a motion to postpone to the April Planning Board Meeting. Mr. Coviello seconded the motion.

The motion to postpone to the April 16, 2009 Planning Board meeting passed unanimously.

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III. CITY COUNCIL REFERRALS/REQUESTS

A. Request from John Ducci, Northern Tier Real Estate Acquisition & Development, LLC, for property located at 172 Hanover Street, to remove the current glass atrium enclosure and replace with a more permanent structure;

Mr. Holden felt that the Department’s Memo was fairly clear. Mr. Ducci was expected to write a letter to seek modifications to the existing structure and do a new license. The Department has not received that letter so the Department was unaware of what will happen next. He recommends that, if they concur with the Department’s recommendation that the Vaughan Mall right-of-way is significant to the City’s future and they should not allow a permanent encroachment in that, that they favorably make the following recommendations. He suggests all six of them with a request that the Department report back in April with Mr. Ducci if they want to proceed with #5 & #6. That would avoid two reports to the City Council, affirming no permanent encroachments in the Vaughn Mall right of way but also allowing for the opportunity if Mr. Ducci would so like to make modifications to the existing structure that would then allow for a new license agreement to be prepared.

Ms. Gefford made a motion that they recommend to the City Council Items #1 – 5 in the Department’s Memorandum, and she wanted to affirm that permanent encroachment in the Vaughan Mall is not a good idea. Ms. Roberts seconded the motion.

The motion as follows, passed unanimously:

1. That the Board advises the Council that permanent encroachments should not be allowed within this right-of-way;
2. That the public’s interest in this right-of way is significant and should be retained and maintained so as to meet future needs;
3. That no permanent easements should be authorized by the City;
4. That properly drafted, a License Agreement could be prepared/approved that would protect the City’s interest in this right-of-way and allow for existing (or modified) encumbrances;
5. That conceptually the Board would favorably recommend that minor modifications should be allowed to the existing structure subject to the Board’s review and the offering of a favorable recommendation to the Council concerning this design; and,
6. That the Board will review this at the April 16, 2009 Planning Board Meeting for additional recommendations.

Mr. Holden assumed they can communicate with Mr. Ducci and try to do #5 and #6 at the April meeting.

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B. Request from Laurel Crawford, Empower Yoga Center, LLC, for property located at 63 Market Street, to install a projecting sign;

Mr. Holden stated that this new sign that is projecting over a sidewalk to go in place of a preexisting sign. The sign is slightly different and subject to a sign permit and also subject to a license to protect the City. The Department continues to recommend licenses so that the City retains the right in the future outside of the land use controls to remove a sign if deemed appropriate. There are no real outstanding issues but are just addressing the appropriate way to address an encroachment over a right of way.

Mr. Coviello made a motion for a favorable recommendation to the City Council. Ms. Geffert seconded the motion.

The motion, as follows, passed unanimously:

1. That the request shall be subject to a municipal license and this license shall be approved by the Legal Department as to content and form, it should be revocable by the City and if an encroachment needs to be removed or relocated for any purpose, it will be done at no cost to the City; and,
2. That any resulting disturbance of a sidewalk, street or other public infrastructure shall require its restoration at no municipal cost and subject to review and acceptance by the Department of Public Works.

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C. Request from JASK Realty Trust, for property between Bartlett Street and the U.S. Route One By-Pass, to rezone land;

Mr. Holden indicated that Attorney Pelech was present if the Board wished him to speak. This is a referral from the City Council to rezone land off the Route One By-Pass. Attorney Pelech has filed the required matrix. Normally they would direct the Department to prepare its rezoning report and submit its finding back to them so that they can decide what they want to do next.

Attorney Pelech had nothing new to report. He had not heard back from U-Haul. Jask owns all except four of the parcels. Three of the four property owners have voiced their support. U-Haul International has not responded. He agreed with Mr. Holden that the next step would be to have the Planning Department report back to the Board. They also would address a through connector roadway as part of the rezoning.

Mr. Holden suggested that they may want to direct the Department to prepare a rezoning report for their review.

Councilor Dwyer felt that they have tended to not do that over the past 12 months. They are very close to looking at the Zoning Map as a whole. She thought they would want to look at this in light of proposed changes along with other properties as this may not be the most appropriate choice for all of that area. She felt they needed to look at this as a whole and not piecemeal. She thought they had already made that decision.

Mr. Holden made the comment that the Master Plan addresses this area for re-zoning. Councilor Dwyer did not disagree with that but felt they need to look at this in light of the new zoning options they are creating. That was the path the Department was leading them down.

Mr. Holden felt that if they wanted the Department to prepare a re-zoning report, that would be a function in that report.

Mr. Coviello asked if staff will make a recommendation to treat this separately or as a whole? Mr. Holden indicated that is one of the things that would be reviewed but he doesn't think they can turn it around in April but maybe they could in May and it would include suggestions on how the Board could handle it.

Mr. Coker asked if the next step procedurally is the rezoning report? Mr. Holden felt the first step was to decide whether they wanted to do it and he is trying to say that there is a lot of good stuff out there but they have been waiting to get the Zoning Ordinance and Zoning Map done and this crosses over in that. He suggests they give the Department some time to get everything together.

Mr. Coviello made a motion to direct the Department and the applicant to follow the Board's administrative procedure for rezoning requests and to have materials available for a subsequent meeting in May or June and the Department should prepare a Re-Zoning Report. Mr. Blenkinsop seconded the motion.

Councilor Dwyer asked to amend the motion to pick up the discussion they had that it would be a part of their overall zoning map review and not as a separate piece. Mr. Holden pointed out that the Department would point out at the beginning that there is not a lot of sense to do this under the current ordinance.

The amendment was acceptable to Mr. Coviello and Mr. Blenkinsop.

The motion, as follows, passed unanimously:

To direct the department and the applicant to follow the Board's administrative procedure for rezoning requests and to have materials available for a subsequent meeting in May or June. Additionally, that this shall be part of their overall zoning map review and not as a separate review.

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IV. OLD BUSINESS

A. Request of Madison Commercial Group for property located at 72 Mirona Road for a one year extension of Site Review Approval which was granted on May 15, 2008;

Mr. Holden confirmed this approval would expire on May 15th and it would their first extension.

Mr. Hopley made a motion to grant Site Review Approval to May 15, 2010. Ms. Roberts seconded the motion.

The motion passed unanimously.

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B. Report back on condition compliance for property located at 195 Hanover Street;

Mr. Holden indicated that the Board may recall this is the Parade Mall property, which was subdivided into three lots. One condition of subdivision and subsequently site review was to track the original easements that were part of the development as one lot. They now have site review approval for one lot and a condition was to review the easements. This is basically a report back to the Board on the condition of tracking those easement. They had a Memo from Attorney Sullivan which will clear any

title research to show that the easements were taken care of and this was consistent with both subdivision and site review approvals.

Mr. Coviello made the motion, that in connection with the Portwalk Project the Planning Board hereby approves the termination of the License for Deer Street access shown on the Declaration of License recorded in the Rockingham County Registry of Deeds at Book, 4392, Page 2890, at Page 2892. This approval is subject to the prior recording of the private street agreement identified as Item 1 on a letter addressed to Jeffrey Johnston of Parade Office LLC from David Holden, Planning Director, dated August 29, 2008 describing the conditions of final subdivision approval for property located at 195 Hanover Street. Mr. Blenkinsop seconded the motion.

The motion passed unanimously.

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V. AMENDED SITE PLAN REVIEW

Chairman Ricci stepped down as he had a conflict. Vice Chairman Roberts read the request into the record.

A. Request of Lafayette School Senior Apartments for property located at 100 Lafayette Road, for amended Site Review Approval to add an exterior generator;

Mr. Holden explained that the Department entertained these amendments and they are notifying the Board of them and recommending approval. They are requesting an exterior generator. They are not supporting a change of materials on the fence, which was withdrawn, but they recommend that the fence be shortened at the request of the abutter.

No motion was required.

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Mr. Holden reminded the Board of the special meeting next Wednesday with the EDC, HDC, City Council and Art Speak at the Public Library to review the Islington Street Corridor Study.

The next Planning Board Work Session is April 2nd to review Borthwick Village.

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VI. ADJOURNMENT

A motion to adjourn at 7:55 pm was made and seconded and passed unanimously.

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Respectfully submitted,

Jane M. Shouse
Acting Secretary for the Planning Board

These minutes were approved by the Planning Board on April 16, 2009.