

**MINUTES**

**PLANNING BOARD  
PORTSMOUTH, NEW HAMPSHIRE**

**CITY HALL, MUNICIPAL COMPLEX, 1 JUNKINS AVENUE**

**7:00 P.M.**

**DECEMBER 15, 2016**

**MEMBERS PRESENT:** John Ricci, Chairman; Elizabeth Moreau, Vice Chairman; Nancy Colbert-Puff, Deputy City Manager; David Moore, Assistant City Manager; Colby Gamester; Jay Leduc; Dexter Legg; Jody Record; and Jeffrey Kisiel, Alternate

**ALSO PRESENT:** Mr. Taintor, Planning Director; Jessa Berna, Planner I

**MEMBERS ABSENT:** Rebecca Perkins, City Council Representative

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**I. APPROVAL OF MINUTES**

1. Approval of Minutes from the November 17, 2016 Planning Board Meeting;

*Vice Chairman Moreau moved to approve the minutes from the November 17, 2016 Planning Board meeting, seconded by Mr. Legg. The motion passed unanimously (7-0).*

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**II. DETERMINATIONS OF COMPLETENESS**

A. Subdivisions:

1. The application of **Linda-Marie and William L. Jones, Owners**, for property located at **400 Middle Road**, and **Seacoast Trust, LLP, Owner**, for property located at **150 Route 1 By-Pass**, requesting Preliminary and Final Subdivision (Lot Line Revision).

*Vice Chairman Moreau moved to determine that the application is complete according to the Subdivision Rules and Regulations and to accept it for consideration approve completeness, seconded by Mr. Legg. The motion passed unanimously (7-0).*

B. Site Plan Review

- 1. The application of **Carol I. Cooper, Owner, and Lorax Sustainable Development, LLC, Applicant**, for property located at **996 Maplewood Avenue**, requesting Site Plan Approval.

*Mr. Legg moved to determine that the application is complete according to the Site Review Regulations and to accept it for consideration, seconded by Vice Chairman Moreau. The motion passed unanimously (7-0).*

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*Mr. Legg moved to take items B and C under Public Hearings – Old Business out of order for the purpose of postponement, seconded by Vice Chairman Moreau. The motion passed unanimously (7-0).*  
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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 **Chase B. Bailey and Kit Soave-Bailey, Owners**, for property located at **3 Curriers Cove**, requesting a Conditional Use Permit under Section 10.1017 of the Zoning Ordinance for work within the inland wetland buffer to remove and relocate an existing pool, associated concrete, and retaining wall, including related miscellaneous improvements, with 1,770 ± s.f. of impact to the wetland buffer. Said property is shown on Assessor Map 204 as Lot 12 and lies within the Single Residence A (SRA) District.

**The Chair read the notice into the record.**

Mr. Taintor briefly stated the stipulations included in the Conservation Commission’s recommendation to the Planning Board.

**SPEAKING TO THE APPLICATION**

Joe Coronati, Jones & Beach Engineers, was present to speak to the application.

Mr. Coronati provided a brief history and background of the home. The project consists of converting the existing deck in the rear building into a screened in porch. Decorative trellises along the roof line will be added for architectural features and sun shading. Both the existing pool house and pool will be removed and rebuilt in a different location and manner. A section of trellis above the front entrance will be impervious. There is a net reduction of 3’ of impervious surface within the buffer. The Conservation Commission requested a definition for using the silt sock. A stone drip edge will be installed around the house to infiltrate stormwater roof runoff.

Vice Chairman Moreau asked whether the proposed pool will be the same size as the existing size. Mr. Coronati replied that it is roughly the same size, but a different shape.

Chairman Ricci questioned how much impervious area is being added outside the buffer. Mr. Coronati explained that because the concrete and poolhouse are being removed, there is a reduction of impervious surface in the City's 100' buffer, however, there will be more pervious surface added outside that buffer. He added that the pool is being replaced because of its age and conditions.

Mr. Coronati replied to Mr. Legg that the drip edge will be installed almost entirely around the perimeter of the house.

Chairman Ricci asked if anyone was present from the public wishing to speak to, for, or against the application.

Alec McEachern, an attorney, spoke on behalf of the abutter at 315 Little Harbor Road, Michael and Lisa Oakes. He noted that the Declaration of Restrictions has not been recorded in the Registry of Deeds and it indicates there is a minimum 40' setback area of protected area along the property line. He expressed concern that the proposed fence should be replaced, but not extended further into that 40' setback. He requested that the proposed fence remain wooden and treated with wood color stain and the area around it remain vegetated. He added that the silt control should extend all the way around the pool to prevent runoff into the water.

Kit Soave-Bailey, 3 Curriers Cove, noted that her attorney is in the process of determining the validity of the Declaration of Restrictions. She stated she cannot commit to their request at the time and requested that the application be considered without consideration for the disagreements regarding the fence and vegetation.

Michael Oakes, 315 Little Harbor Road, explained the history regarding the protected area and how it was later discovered to be part of the 3 Curriers Cove property.

The Chair closed the public hearing.

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

Ms. Colbert Puff asked whether the Conservation Commission considered the silt fencing near the pool area. Mr. Taintor was not aware.

*Vice Chairman Moreau moved to grant Conditional Use Permit Approval with the stipulations recommended in the memorandum. Seconded by Ms. Colbert Puff.*

Vice Chairman Moreau noted that it appears to have a net decrease of impact in the wetland buffer.

Chairman Ricci requested that the silt fence span across towards the abutter's property.

Vice Chairman Moreau stated that it is not in the Planning Board purview to address the other concerns raised by the abutter.

Vice Chairman Moreau amended the motion to add a stipulation that the silt fence shall be extended along the abutters property, seconded by Ms. Colbert Puff. The stipulations were as follows:

1. That erosion control measures shall be put in place to protect the adjacent wetland areas from runoff from the project and stockpile areas.
2. The silt fence shall be extended along the abutters property.
3. The applicant shall provide a detail showing how the stormwater coming off the roof of the new enclosed porch will be treated.

The motion passed unanimously (7-0).

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B. The application of **J&M Family Properties, LLC, Owner, and Dunkin’ Donuts, c/o JFS Management Co., LLC, Applicant**, for property located at **802 Lafayette Road**, requesting a Conditional Use Permit under Section 10.1017 of the Zoning Ordinance for work within the tidal wetland buffer for pavement and drainage improvements and onsite stormwater quality treatment, with 11,200 ± s.f. of impact to the tidal wetland buffer. Said property is shown on Assessor Map 244 as Lot 2 and lies within the Gateway (GW) District.

Mr. Legg moved to postpone the application for a conditional use permit to the Planning Board meeting on April 20, 2017, seconded by Vice Chairman Moreau. The motion passed unanimously (7-0).

C. The application of **J&M Family Properties, LLC, Owner, and Dunkin’ Donuts, c/o JFS Management Co., LLC, Applicant**, for property located at **802 Lafayette Road**, requesting Amended Site Plan Approval to re-develop the parking lot for improved site and drive-thru circulation, revised parking layout, new trash enclosure, drainage improvements and stormwater management, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 244 as Lot 2 and lies within the Gateway (GW) District.

Vice Chairman Moreau moved to postpone the application for site plan review to the Planning Board meeting on April 20, 2017, seconded by Mr. Legg. The motion passed unanimously (7-0).

**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 **Deer Street Associates, Owner**, for property located at **165 Deer Street and 181 Hill Street** requesting design review of proposals to construct three mixed-use buildings fronting on Deer Street and a fourth mixed-use building fronting on a future public street off Bridge Street to be created in association with the City’s new parking garage. Said properties are shown on Assessor Map 125 as Lot17 and Assessor Map 138 as Lot 62 and all lots lie within the CD5 District and the Downtown Overlay District (DOD) and two of the proposed buildings lie within the Historic District.

**The Chair read the notice into the record.**

Mr. Taintor briefly explained the process for conducting a design review. The actions consist of voting to determine whether sufficient information is available, conducting a public hearing, and subsequently voting to determine whether the design review process is complete. It is nonbinding and provides an opportunity for the Board to have an informal discussion. It is possible that the Board can vote to postpone the public hearing to a later date and schedule a work session prior to that date. This project is under one design review request for five different lots and all the individual applications will come separately at a later time.

Mr. Legg asked if when reviewing the separate applications, the Board would still refer back to the original design review. Mr. Taintor confirmed that. He added that two of the buildings are in the Historic District, which means the timing of construction will be staggered and there is a potential that the review through the Historic District Commission could change certain aspects of the design. Also, this project and the City's parking garage project are related to an overall project.

Ms. Colbert Puff asked whether the applicant supports postponing the public hearing versus using the presentation as a precursor to the work session. Chairman Ricci felt there is great value in a work session since it saves time with the Board and creates an opportunity for open dialog. Vice Chairman Moreau noted that when the design review process was used for Harborcorp, the joint work session was quite helpful. Mr. Leduc agreed that a work session is a great opportunity.

Mr. Taintor suggested to continue holding the presentation given that public notice was made and the applicant was prepared to present.

*Vice Chairman Moreau moved to determine that the request for design review includes sufficient information to allow the Board to understand the project and identify potential issues and concerns, and to accept the request for design review, seconded by Mr. Legg. The motion passed unanimously (7-0).*

**SPEAKING TO THE APPLICATION**

The following individuals were present to speak to the application:

- Tracy Kozak, JSA Architecture
- Kim Rogers, GL Rogers and Company
- Dave Allen, City of Portsmouth
- Bob White, Greenman-Pedersen, Inc.
- Joseph Kieffner, GeoInsight

The presentation from the various individuals included the following statements:

- The project proposes to construct four buildings and one open space. Two of the lots are located in the Historic District. The open space at Lot 2 will involve much collaboration with the community and would eventually be conveyed to the City once the development is complete. The North End Vision Plan and the proposed application was presented to demonstrate that the proposed parking garage and Lot 3 locations are slightly shifted in order to incorporate the open space at Lot 2.

- The programming for the buildings and construction phasing as follows. Lot 2 would consist of a community space. Lot 3 would consist of a commercial space along the front, parking in the rear, and a hotel lobby in the middle with a pickup and drop off entrance at the side. The upper stories are hotel rooms, residences, and a rooftop bar. Lot 4 would consist of restaurants at the first level and office space in the upper floors. Shared transformers and dumpsters will be located in the rear. Lot 5 would consist of a ramp to enter into an underground garage underneath a pharmacy. It is possible the bank would be temporarily located in this building while Lot 4 is under construction. The upper levels of Lot 5 consist of residential units and a portion of those units being workforce housing. The sidewalk along the front of Lots 2 through 5 would be 14' wide with the intention of activating the street scape.
- The civic space at Lot 2 will be used as a lay down and construction area for Lot 6 and Lot 2. The City will have rights to about 10' of Lot 2 for staging for the parking garage project.
- The procedures involved regarding the agreements between the City and Deer Street Associates to build the Deer Street extension, sewer expansion, and the civic space were explained. Mr. Taintor additionally explained the anticipated Council actions to occur in the January meeting regarding those agreements.
- The public outreach was noted in order to design a landscaping appearance that would enhance the street scape along the Maplewood Ave railroad tracks, Deer Street, and to the entrance of the parking garage. It will be possible to tie in historical and archaeological features into the landscaping. Briefly described were the community's interests and demonstrated how that was incorporated into the design. The proposed plan fits in with the North End Vision Plan, which emphasized workforce housing, amenities, sustainable practices, and activated streets.
- The general traffic, utilities and stormwater layout, and phasing plan was described. Most of the proposed locations for the transformers, utility easements, stormwater detention, and dumpsters would be near Lot 3 and 4. There is currently overhead power at Hill St, which would be removed and transferred to Hanover St.
- The entire sidewalk from Maplewood Ave to the entrance of the parking garage would be fully ADA accessible. The driveway between Lots 3 and 4 would be a curb extension with a green strip of stormwater plantings on either side. Other efforts for stormwater treatment in and around the civic space was explained.
- It was noted that there may be a better alternative for the drive thru location to avoid potential cross over traffic with the entrance of the underground garage.
- The intersection of Lot 5 would jut out to introduce greenery and trees on the curb side. From that intersection towards the other buildings, there is a downward grade change. There will be room on Deer Street for parallel parking and 2-way traffic.
- There would be a retaining wall behind Lot 6 due to the grade changes.
- The landscaping elements on Lot 6 were highlighted that include street trees, brick sidewalks, stormwater gardens and a roof garden.
- It was noted that the civic space may need to consist of subsurface stormwater detention for the building on Lot 3. It is understood that the City would not accept private utilities, such as stormwater.

Chairman Ricci asked to produce a single plan for all the properties that illustrates the utilities and green space.

Mr. Taintor asked if a 3-lane at the Deer Street and Maplewood Ave intersection is recommended by the traffic study, how that would change the development plans. It could imply a need for additional road width, which would force a less pedestrian friendly environment.

Mr. Taintor questioned the reality of the sequencing of the phasing given that there may be certain buildings that will prevent traffic flow from other buildings during construction. Chairman Ricci suggested that Mr. Allen would be able to provide insight on that.

**DISCUSSION AND DECISION OF THE BOARD**

*Mr. Legg moved to postpone the public hearing until the January 19, 2017 Planning Board meeting to allow the Board to conduct a Work Session on this application on January 12, 2017. The motion passed unanimously.*

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B. The application of **Linda-Marie and William L. Jones, Owners**, for property located at **400 Middle Road**, and **Seacoast Trust, LLP, Owner**, for property located at **150 Route 1 By-Pass**, requesting Preliminary and Final Subdivision (Lot Line Revision) approval between two lots as follows:

- a. Map 231, Lot 57 increasing in area from 8,898 ± s.f. (.20 acres) to 9,355 ± s.f. (.21 acres) with 132’ of continuous street frontage along Middle Road.
- b. Map 231, Lot 58 decreasing in area from 130,658 ± s.f. (2.9994 acres) to 130,201 ± s.f. (2.99 acres) with 132’ of continuous street frontage along Middle Road and 709’ of continuous street frontage along Route 1 By-Pass.

Said lots lie within the Single Residence B (SRB) District which requires a minimum lot size of 15,000 s.f. and 100’ of continuous street frontage.

**The Chair read the notice into the record.**

**SPEAKING TO THE APPLICATION**

Mr. Eric Weinrieb, Altus Engineering, explained the land swap that occurred to put the garage on the entire property. The project proposes a lot line adjustment to fix the garage encroachment, making 400 Middle Road more conforming and improves the existing situation.

Chairman Ricci asked to describe the access. Mr. Weinreib explained how the walkway would be routed which goes through the wooded area and turnaround.

Vice Chairman Moreau noted the substantial grade change and asked whether it will be sloped or stairs. Mr. Weinrieb clarified that it is entering at a location that is low enough by the turnaround.

Chairman Ricci 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 grant Preliminary and Final Subdivision approval with the following stipulations:*

- 1. Property monuments shall be set as required by the Department of Public Works prior to the filing of the plat.*
- 2. GIS data shall be provided to the Department of Public Works in the form as required by the City.*
- 3. The final plat and all deeds shall be recorded concurrently at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.*

*Seconded by Mr. Gamester. The motion passed unanimously (7-0).*

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C. The application of the **Henderson Family Trust, Owner, Hayes H. and Carla C. Henderson, Trustees**, for property located at **205 Odiorne Point Road**, requesting a Conditional Use Permit under Section 10.1017 of the Zoning Ordinance for work within the inland wetland buffer to adjust the grade of the existing lawn, to replace a granite curbing retaining wall and to move a fire pit area, with 6,960 ± s.f. of impact to the inland wetland buffer. Said property is shown on Assessor Map 224 as Lot 10-29 and lies within the Single Residence A (SRA) District.

**The Chair read the notice into the record.**

**SPEAKING TO THE APPLICATION**

Mr. Benjamin Groves, Rye Beach Landscaping, noted that the construction ceased once they discovered that they were operating in a scrub shrub wetland. As a result of that, the project will add buffer planting and a grass swale to help infiltrate the runoff before reaching the wetland. The existing fire pit will be moved. The vertical granite wall will be replaced with something more appealing and the materials will be repurposed. The existing plant material that is disturbing the area will be moved elsewhere on the site. Other plantings are not yet identified due to the availability of natives.

Chairman Ricci asked what is planned for erosion control. Mr. Groves explained that there is silt sock currently in place and the area was hydro seeded to stabilize potential erosion. The permeable patio is partially installed. Chairman Ricci suggested that the plantings should be labeled on the plan and approved by Mr. Britz before installation.

Chairman Ricci 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 grant Conditional Use Permit Approval with the following stipulations:*

- 1. A detail shall be added to the plan showing the permeable patio and the silt sock;*
- 2. All plantings shall be labeled on the plan and approved by Peter Britz prior to installation.*

*Seconded by Mr. Legg. The motion passed unanimously (7-0).*

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D. The application of **Carol I. Cooper, Owner, and Lorax Sustainable Development, LLC, Applicant**, for property located at **996 Maplewood Avenue**, requesting Site Plan Approval for the construction of three single family homes on a single lot with one shared driveway, each home and garage having a footprint of 1,696 ± s.f., with related paving, lighting, utilities, land-scaping, drainage and associated site improvements. Said property is shown on Assessor Map 219 as Lot 4 and lies within the Single Residence B (SRB) District.

**The Chair read the notice into the record.**

### **SPEAKING TO THE APPLICATION**

Mr. John Lorden, TFMoran, explained that each home will have shared access onto Maplewood Avenue via a shared driveway. The plan has been coordinated with the Maplewood Avenue project. Each unit will have its own sprinkler system and propane source. The stormwater will be directed towards the rain gardens. The invasive species around the pond will be removed and blueberry bushes will be planted. The conservation easement is proposed for 50' to protect the area from development.

Vice Chairman Moreau questioned why only 50' for conservation versus the whole 100' buffer. Mr. Lorden felt it would be a reasonable compromise.

Mr. Lorden replied to Ms. Colbert Puff that the condominium association will maintain the rain gardens. Vice Chairman Moreau asked what the City can do in the event that the rain gardens are not maintained. Mr. Taintor believed that typically there isn't, however, there may be an opportunity through review of the cross easements.

Chairman Ricci 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 to grant Site Plan Review approval with the following stipulations:*

1. *The following notes shall be added to the Site Plan (Sheet C-2) and the Landscape Plan (Sheet C-5):*
  - “1. *The Site Plan and the Landscape 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.*”
2. *The Landscape Plan (Sheet C-5) shall include the following additional notes:*
  - “3. *The property owner and all future property owners shall be responsible for the maintenance, repair and replacement of all required screening and landscape materials.*
  4. *All required plant materials shall be tended and maintained in a healthy growing condition, replaced when necessary, and kept free of refuse and debris. All required fences and walls shall be maintained in good repair.*

- 5. *The property owner shall be responsible to remove and replace dead or diseased plant materials immediately with the same type, size and quantity of plant materials as originally installed, unless alternative plantings are requested, justified and approved by the Planning Board or Planning Director.*
- 3. *The Conservation Easement area shall be extended to include the entire 100-foot buffer area.*
- 4. *The Conservation Easement shall incorporate the maintenance of the rain gardens and shall address the impact of the rain gardens on the easement area.*
- 5. *The Conservation Easement and Easement Plan shall be submitted to the Planning and Legal Departments for review and approval.*
- 6. *The applicant shall make a payment in the amount of \$10,000 to the City toward the cost of creating a drainage system off Diamond Drive in compensation for the additional stormwater volume that will flow from the site into the pond.*
- 7. *The Site Plan, Landscape Plan and Conservation Easement shall be recorded at the Registry of Deeds by the City or as determined appropriate by the Planning Department.*

*Seconded by Mr. Legg.*

Mr. Leduc asked for the reasoning to increase the easement from 50’ to 100’. Vice Chairman Moreau explained that it would ensure there is no possibility of building into the buffer by making the entire buffer the conservation easement.

Chairman Ricci asked to include an additional stipulation as follows:

- 8. *Prior to construction, the 100’ buffer shall be staked every 25’ and maintained throughout the course of construction.*

*The motion passed unanimously (7-0).*

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**V. CITY COUNCIL REFERRALS**

A. Proposed acceptance of a permanent easement between Porpoise Way and Portsmouth Boulevard for the purpose of constructing an emergency access road for the Atlantic Heights neighborhood.

Mr. Moore explained that the easement acceptance was discussed as a condition of subdivision approval in a previous application from Eversource. The stipulation required the granting of the easement in favor of the City to address emergency access concerns out of the neighborhood. The easement language associated would be drafted in a manner that fits the project goals and satisfaction of the City prior to presenting to Council.

*Vice Chairman Moreau moved to accept the permanent easement, seconded by Mr. Legg. The motion passed unanimously.*

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**VIII. ADJOURNMENT**

A motion to adjourn at 9:39 pm was made, seconded and passed unanimously.  
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Respectfully Submitted,

Marissa Day  
Acting Secretary for the Planning Board

These minutes were approved at the January 19, 2017 Planning Board Meeting.