

**REGULAR MEETING
PLANNING BOARD
PORTSMOUTH, NEW HAMPSHIRE**

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

7:00 PM

June 16, 2022

MINUTES

MEMBERS PRESENT: Rick Chellman, Chairman; Corey Clark, Vice Chair; Karen Conard, City Manager; Joe Almeida, Facilities Manager; Beth Moreau, City Councilor; Greg Mahanna; Peter Harris; James Hewitt; Franco DiRienzo, Alternate; Andrew Samonas, Alternate;

ALSO PRESENT: Beverly M. Zendt, Planning Director; Peter Britz, Environmental Planner; Stefanie Casella, Planner 1

MEMBERS ABSENT: Jane Begala

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REGULAR MEETING 7:00pm

I. APPROVAL OF MINUTES

Chairman Chellman commented that Mr. DiRienzo would vote tonight because Ms. Begala was absent.

A. Approval of the May 19, 2022, regular meeting minutes.

City Council Representative Moreau moved to approve the May 19, 2022, regular meeting minutes, seconded by Vice Chairman Clark. The motion passed by an 8-0-1 vote. Mr. Almeida abstained because he was not at the meeting.

B. Approval of the March 30, 2022 and May 5, 2022 special meeting minutes.

City Council Representative Moreay moved to approve the March 30, 2022, and May 5, 2022, special meeting minutes as presented, seconded by Vice Chairman Clark. The motion passed by an 8-0-1 vote. Mr. Almeida abstained because he was not at the meeting.

C. Approval of the May 19, 2022, site walk minutes.

Mr. Mahanna commented that the last bullet point should say “solid waste.” There was also significant dialogue with City Attorney Sullivan at the beginning that was not reflected in the minutes. Chairman Chellman commented that City Attorney Sullivan’s main point was that the Board should not be deliberating at the site walk. He described how the Board should interpret the information and noted that there should not be any deliberation until an application was being considered by the Board. The main point of the information was captured.

City Council Representative Moreau moved to approve the May 19, 2022, site walk minutes, seconded by Vice Chairman Clark with the following amendment:

1) Last bullet should read “solid waste”

The motion passed by an 8-0-1 vote. City Manager Conard abstained because she was not at the meeting.

II. DETERMINATIONS OF COMPLETENESS

SUBDIVISION REVIEW

- A. The request of **North Church of Portsmouth (Owner)**, for property located at **355 Spinney Road** requesting Preliminary and Final Subdivision approval

SPEAKING TO THE APPLICATION

City Council Representative Moreau moved to determine the application is complete according to the Subdivision Regulations, (contingent on the granting of any required waivers under Section III and IV of the agenda) and to accept the application for consideration, seconded by Vice Chairman Clark. The motion passed unanimously.

III. 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. **REQUEST TO POSTPONE** The request of **Mastoran Restaurants Inc. (Owner)**, and **Granite State Convenience (Applicant)**, for property located at **2255 Lafayette Road** requesting Site Plan review and Conditional Use Approval for use 19.40 under Section 10.440 to allow a drive-thru facility as an accessory use to a permitted principal use in the Gateway Corridor Zone. Said property is shown on Assessor Map 272 Lot 3 and lies within the Gateway Corridor (G1) District. (LU-22-13) **REQUEST TO POSTPONE**

DISCUSSION AND DECISION OF THE BOARD

Mr. Mahanna moved to postpone consideration to the June 23, 2022, Planning Board meeting, seconded by Vice Chairman Clark. The motion passed unanimously.

- B.** The request of **North Church of Portsmouth (Owner)**, for property located at **355 Spinney Road** requesting Preliminary and Final Subdivision approval to subdivide one existing lot with 146,666 square feet of lot area and 10,429.68 feet of frontage into two lots as follows: Proposed Lot 1 with 17,817 square feet of lot area and 117.6 feet of frontage, and Proposed Lot 2 with 128,849 square feet of lot area and 360.62 feet of lot frontage. Said property is located on Assessor Map 169 Lot 1 and lies within the Single Residence B (SRB) District. (LU-22-49)

SPEAKING TO THE APPLICATION

Liz Good from North Church of Portsmouth and Surveyor Nathan Amsden spoke to the application. Ms. Good commented that they were seeking subdivision approval for the lot with the parish house and parsonage. The parsonage was bequeathed to the church in the 1970s. Membership recently voted to move all operations to the downtown building in Market Square and put the parish house up for sale. They want to retain the parsonage. They have been to TAC and incorporated their feedback. They made the parsonage lot larger to follow the stone wall and encompass the sewer in the back. A dye test for the sewer running from the parish house showed that it is correctly marked and discharges at the Bypass.

Vice Chairman Clark questioned if the easement for the sewer going to the adjacent lot was all set. Mr. Amsden responded that the current easement applies to the lot, so a revised easement should be issued referencing the recorded plan. The easement has not moved.

Mr. Hewitt questioned if they were originally separate lots. Mr. Amsden responded that originally it was 3 separate lots.

PUBLIC HEARING

Chairman Chellman 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

1) Vice Chairman Clark moved to approve Preliminary and Final Subdivision as presented, seconded by Mr. Mahanna with the following stipulations:

1.1) Lot numbers as determined by the Assessor shall be added to the final plat prior to recordation with the Registry of Deeds.

1.2) Property monuments shall be set as required by the Department of Public Works prior to the filing of the plat.

1.3) GIS data shall be provided to the Department of Public Works in the form as required by the City.

1.4) The final plat and all easement deeds (if applicable) shall be recorded concurrently at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.

The motion passed unanimously.

- C. The request of **404 Islington Street LLC (Owner)**, for property located at **404 Islington Street** requesting a Conditional Use Permit under Section 10.1112.14 of the Zoning Ordinance to provide ten (10) parking spaced where thirteen (13) are required. Said property is shown on Assessor Map 145 Lot 33 and is located in the Historic District and the Character District 4L-2 (CD4-L2). (LU-22-74)

SPEAKING TO THE APPLICATION

Attorney John Bosen, John Chagnon from Ambit Engineering, and owner Timothy Johnson spoke to application. Mr. Bosen commented that they were requesting a CUP to provide 11 spaces for a 10-room inn where 13 spaces are required. The site currently operates as Martin Hill Inn and has 7 units with a caretaker cottage. With this project they will remove the caretaker suite and provide 10 units. The proposed parking has been vetted by staff and TAC. They will need a special exception from the zoning board because they are moving from a B&B to an inn. That application has been filed. The parking demand analysis shows that it is a negligible increase and will not alter the neighborhood. They believe it is sufficient parking on site. The owners of 54 Court St. will also provide 5 overflow spaces on their site if needed. They will allocate one space per unit, and there will be an online advance check in system. Guests will know the parking situation in advance. This property has been a bed and breakfast for many years and there will not be any exterior changes. There should be adequate parking.

City Council Representative Moreau questioned what the occupancy of each room was. Mr. Johnson responded that each room was dual occupancy.

Mr. Hewitt requested clarification on how many spaces they were proposing on site. Mr. Bosen responded that there are 10 spaces there today and they are proposing 11 spaces. The ordinance requires 13. Mr. Hewitt questioned if spaces 9 and 10 fit standard parking space measurements. Mr. Bosen responded that those are pre-existing non-conforming spaces. It is their position that those are grandfathered spaces. This was vetted with TAC. Mr. Hewitt questioned what the dimensions were. Mr. Chagnon responded that there was 20 feet between the buildings. There is plenty of room to park two cars.

Chairman Chellman questioned if they would be coming back for site plan approval. Mr. Chagnon responded that site plan approval was not required because there was no expansion of the building, no creation of 800 sf or more of impervious surface, and they were not creating 5 or

more parking spaces. They need a CUP for parking because of the change of use. Chairman Chellman questioned if they would need dimensional relief for the parking spaces. Ms. Zendt responded that TAC made the determination that these were existing no conforming spaces. They asked for some improvements to be made such as restriping and adding new pavement. None of that will trigger a site plan review. They did not request dimensional relief for the existing spots.

Chairman Chellman questioned if the parking situation worked for the existing inn with 7 rooms. Mr. Chagnon responded that the caretaker cottage used the Union St. parking. The rest of the spaces were for the guests. The inn has been in operation for many years and operated well with no issues. Chairman Chellman questioned if they were widening access to Union St. Mr. Chagnon confirmed they were.

Mr. Harris questioned if they knew of any other CUPs that had been granted for parking on Union St. City Council Representative Moreau responded that she did not know of any. Union St. has residential units who all have their own parking. That's the only bigger development in the area.

PUBLIC HEARING

Chairman Chellman 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

VCC moved to find off street adequate and approp with 1.1 stip, seconded by CCM.

1) Vice Chairman Clark moved to find that the number of off-street parking spaces provided will be adequate and appropriate for the proposed use of the property and to grant the conditional use permit as presented, seconded by City Council Representative Moreau with the following stipulation:

Prior to Building Permit Issuance:

1.1) Applicant obtains special exception approval per section 10.440 of the Zoning Ordinance.

Vice Chairman Clark commented that parking is a concern to everyone in this case 10 units with 11 spaces should work. It has worked in the past. They are assigning spaces and the remote check in should mitigate any issues.

City Council Representative Moreau commented that it is unlikely that there will be multiple coming for each room. The parking is appropriate based on the room occupancy.

Ms. Zendt commented that this has been operating historically as an inn, but it was owner occupied. Staff made the request that they get a special exception to make sure there is additional notification to the surrounding property owners.

The motion passed unanimously.

- D. REQUEST TO POSTPONE** The request of **James and Gail Sanders (Owners)**, for property located at **445 Marcy Street** requesting Preliminary and Final Subdivision approval to subdivide one lot with 14,947 square feet of lot area and frontage on Marcy Street, Pray Street, and Partridge Street into two lots as follows: Proposed Lot 1 with 6,127 square feet of lot area and 102.43 feet of frontage on Marcy Street and 67.83 feet of frontage on Pray Street, Proposed Lot 2 with 8,820 square feet of lot area and 802 feet of frontage on Pray street and 62.44 feet of frontage on Partridge Street. Said property is located on Assessor Map 101 Lot 3 and lies within the General Residence B (GRB) and Historic Districts. (LU-22-79) **REQUEST TO POSTPONE**

DISCUSSION AND DECISION OF THE BOARD

Vice Chairman Clark moved to postpone consideration to the June 23, 2022, Planning Board meeting, seconded by Mr. Mahanna. The motion passed unanimously.

IV. CITY COUNCIL REFERRALS

- A. REQUEST TO CONTINUE AND POSTPONE** Public Hearing and consider a recommendation to the City Council for Zoning Ordinance Amendments to Building Height standards **TO THE JUNE 23, 2022 PLANNING BOARD MEETING**

DISCUSSION AND DECISION OF THE BOARD

Vice Chairman Clark moved to postpone consideration to the June 23, 2022, Planning Board meeting, seconded by Mr. Hewitt. The motion passed unanimously.

- B.** Consider a report back to the City Council on how to improve the work of the Demolition Committee.

DISCUSSION AND DECISION OF THE BOARD

City Council Representative Moreau commented that she was the Chair of the Demolition Review Committee since its implementation. The ordinance came about because neighbors were upset when a house that was outside of the Historic District or Board of Adjustment purview was torn down. There was no mechanism to have the public be heard. This entire ordinance was created for that. There is no NH legislative backing to have created this. If someone were to challenge it, then they would most likely win. However, this ordinance did save the Carey Cottage. This provides a space for the public to be heard and everyone to consider if there is

another option, but it cannot prevent a demolition. They can delay for 90 days. Some on the previous board wanted to extend the delay to 180 days, but ultimately that would have been too long. The ordinance could use some cleaning up. Today they send notice of a demolition and if anyone objects they have a hearing and the delays begin. They need to change the ordinance to ensure that a partial demolition doesn't become a full demolition without public notice.

Ms. Zendt noted that the memo was prepared by herself, Nick Cracknell, City Attorney Trevor McCourt and Shanti Wolph. The proposed revisions have been referred out to the Planning Board and HDC for recommendations to the City Council. The staff analysis includes things for consideration. There is not a lot of State support that allow for demolition prevention out of the Historic District, but notices and delays are typical. The intent of the recommendations was to set higher thresholds for demolition and extend the length for public discussion. It will provide the opportunity to extend discussions with the developer to come up with solutions or for someone to acquire it for restoration. All recommendations should be referred to City Council and there should be a detailed legal analysis too. The delay will be 90 days from the day of the hearing not the date of the submittal. That will give opportunity for people to record what is there or have discussions. If they wanted to add protections to historic resources, then they can do a survey to identify historic structures and create an ordinance.

Chairman Chellman questioned if this would be sent to legal for review before it went to City Council. Ms. Zendt responded that it would go to Council then to staff.

City Council Representative Moreau commented that it was good to start the 90-day timeline from the date of the hearing. Mr. Mahanna agreed. Mr. Mahanna questioned what the increased period referred to in item 4. Ms. Zendt responded that referred to the first bullet which increased from 50 years to 75 years. Mr. Mahanna commented that sometimes it is hard to tell how much a house can or cannot be saved until construction begins.

Mr. Samonas commented that it was a balancing act between preserving historic homes and improving a situation with a newer more efficient home. Mr. Mahanna added that sometimes it is hard to preserve a historic home and bring it up to code.

Mr. Almeida commented that it was good they did not extend the delay to 180 days. It can be hard because anyone can object to the project, and it will cause a delay. However, it can be good because the process has saved some buildings.

City Council Representative Moreau noted that in the past some read into the ordinance that people can have a say on what the building will look like. They worked to ensure that no language in the ordinance supported that. They don't have a right to tell people what a house can look like if it's not in the Historic District.

Chairman Chellman questioned how they could do this if they did not have any authority for it. City Council Representative Moreau responded that it's an ordinance. Unless someone takes it to court people follow the ordinance. Ms. Zendt agreed that at this point it valid because it has not been challenged. It is consistent with other communities' policies. Chairman Chellman

commented that it would be better to find a way to give it some authority. Preserving history is important, but it would be better to have rules that make sense.

City Attorney Sullivan commented that the City Council has requested a statement from legal on authority. Whether sufficient authority exists depends on what the City may want to do. The Planning Board should make a recommendation to proceed in a direction they want to see the City go. When it gets to the Council level, they will provide the most complete statement on authority. If they conclude there is no authority, then they will conclude there cannot be an ordinance.

Mr. Hewitt commented that Portsmouth used to have two Historic Districts. It could be an option to reactivate that area.

1) City Council Representative Moreau moved to recommend that the City Council consider implementing the recommendations of the DRC subject to a detailed legal analysis to ensure that the recommendations are in conformance with state law, case law, and best practices, seconded by Mr. Mahanna with the following change:

- Rather than extending the stay of demolition to 180 days, it would be advisable to commence the 90-day demolition delay period from the date of the public hearing required under Section 14.205. Additionally, expanded notification procedures to abutters would serve the purpose of broadening public awareness of impending demolitions and it would provide opportunities to affected community members to gain photographic records, influence the property owner to consider other courses of action, and to consider alternatives to demolition.

The motion passed unanimously.

V. OTHER BUSINESS

- A.** Consider a recommendation to City Council to accept a right-of-way easement which would incorporate a section of proposed roadway into the City's existing Sagamore Grove right of way.

DISCUSSION AND DECISION OF THE BOARD

Ms. Zendt commented that the memo outlines that the amendment would include the portion of Sagamore Ave. that is not currently in the easement.

Mr. Mahanna moved to recommend that City Council accept a right-of-way easement which would incorporate a section of the proposed roadway into the City's existing Sagamore Grove right of way, seconded by City Council Representative Moreau.

The motion passed unanimously.

- B. Consider a recommendation to City Council to accept a right-of-way easement located on Albany Street requested by the Planning Board on January 27, 2022, as part of the project located at 89 Brewery Lane.

DISCUSSION AND DECISION OF THE BOARD

City Council Representative Moreau moved to recommend that the City Council accept a right-of-way easement, located on Albany Street, requested by the Planning Board on January 27, 2022 as part of the project located at 89 Brewery Lane, seconded by Vice Chairman Clark.

The motion passed unanimously.

C. Chairman's Update/Discussion.

Chairman Chellman noted that this was a placeholder that will be at the end of the agenda in case something comes up that the Board members wish to discuss. There have been discussions about other zoning amendments that aren't on the Land Use Committee's short-term radar. Staff is fully committed and engaged. They may have little bandwidth to address it immediately, but they are open to discussion.

City Council Representative Moreau provided a quick update on the Land Use Committee. They have just finished with the focus groups about ADUs. They have an intern starting to work on sending questions to abutters to gather more written data. After that they will report back on the feedback and red line changes they plan on making.

Mr. Hewitt commented that his biggest concern was the parking regulations. They need to ensure that projects are not getting approved with inadequate parking and then coming back to request more later. Chairman Chellman offered to provide the Board with a presentation explaining the ITE parking generation data and what the benefits and limitations are with it.

Mr. Harris agreed that parking was an ongoing concern especially for neighborhoods bordering downtown. They can't keep adding housing without changing the parking to go along with it. City Council Representative Moreau commented that she lives in the Islington Creek Neighborhood, and they have been in a pilot neighborhood parking program. The program has worked pretty well. It could work for other neighborhoods as well. Downtown workers are taking advantage of the parking program at the Foundry Garage. Ms. Zendt added that there was a parking RFP from Public Works and part of the study will look at how to maximize the utilization and optimization of parking. They will consider pricing to drive the demand and use programs effectively. It would be informative to look at that. Adding more parking incentivizes automobiles. When the scope is finalized, they will come before the Board to talk about deliverables, and timeline. Small tweaks on timing and metering can completely change the picture.

Chairman Chellman commented that these changes tie into regulation. To say Portsmouth should be car free is not realistic. Mr. Samonas added that he agreed with the

concerns on parking. As Portsmouth becomes more walkable and bikeable they could amend and adjust accordingly. Chairman Chellman noted that they have to be careful on how they promote the growth. The management is just as important. Reality and context need to be considered.

VI. ADJOURNMENT

Mr. Almeida moved to adjourn the meeting at 8:33 p.m., seconded by Vice Chairman Clark. The motion passed unanimously.

Respectfully submitted,

Becky Frey,
Secretary for the Planning Board