

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

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

**7:00 PM**

**June 23, 2022**

**MINUTES**

**MEMBERS PRESENT:** Rick Chellman, Chairman; Karen Conard, City Manager; Joe Almeida, Facilities Manager; Beth Moreau, City Councilor; Greg Mahanna; Peter Harris; James Hewitt;

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

**MEMBERS ABSENT:** Corey Clark, Vice Chair; Franco DiRienzo, Alternate; Andrew Samonas, Alternate; Jane Begala

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**I. APPROVAL OF MINUTES**

A. Approval of the April, 21 regular meeting minutes

City Manager Conard moved to suspend the rules to bring forward item IV. G out of order, seconded by City Council Representative Moreau.

City Manager Conard commented that it's at the end of the agenda and it is a quick item.

The motion passed unanimously.

City Council Representative Moreau moved to suspend the rules to bring forward item V. A out of order, seconded by Mr. Almeida. The motion passed unanimously.

City Council Representative Moreau moved to approve the minutes from the April 21, 2022, regular meeting, seconded by Mr. Harris. The motion passed unanimously.

**II. DETERMINATIONS OF COMPLETENESS**

**SUBDIVISION REVIEW**

- A. The request of **Artwill LLC (Owner)**, for property located at **437 Lafayette Road** requesting Preliminary and Final Subdivision

City Council Representative Moreau moved to determine the applications 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 City Manager Conard.

The motion passed unanimously.

- B. The request of **James and Gail Sanders (Owners)**, for property located at **445 Marcy Street** requesting Preliminary and Final Subdivision

City Council Representative Moreau moved to determine the applications 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 City Manager Conard.

The motion passed unanimously.

#### **SITE PLAN REVIEW**

- A. The request of **RIGZ Enterprises LLC (Owner)**, for property located at **806 Route 1 Bypass** requesting Site Plan Review

City Council Representative Moreau moved to determine that the applications complete according to the Site Plan Review Regulations, (contingent on the granting of any required waivers under Sections III and IV of the agenda) and to accept the application for consideration, seconded by City Manager Conard.

The motion passed unanimously.

- B. The request of **Artwill LLC (Owner)**, for property located at **437 Lafayette Road** requesting Site Plan Approval

City Council Representative Moreau moved to determine that the applications complete according to the Site Plan Review Regulations, (contingent on the granting of any required waivers under Sections III and IV of the agenda) and to accept the application for consideration, seconded by City Manager Conard.

The motion passed unanimously.

- C. The request of **Mastoran Restaurants Inc. (Owner)**, and **Granite State Convenience (Applicant)**, for property located at **2255 Lafayette Road** requesting Site Plan Review

City Council Representative Moreau moved to determine that the applications complete according to the Site Plan Review Regulations, (contingent on the granting of any required waivers under Sections III and IV of the agenda) and to accept the application for consideration, seconded by City Manager Conard.

The motion passed unanimously.

### 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 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)

### SPEAKING TO THE APPLICATION

City Manager Conard moved to consider Public Hearings Old Business Item A. and Public Hearings New Business Item A., seconded by City Council Representative Moreau. The motion passed unanimously.

John Bosen, Brad Pernaw, and Nicole Doucette spoke to the application. Mr. Bosen commented that the project had been in the works since 2021. They have worked with the Conservation Commission, TAC and the BOA on this. They were in full agreement with the staff memo stipulations.

Ms. Doucette commented that this proposal was for the Burger King property that is across from Water Country. The proposal is for a 4,970 sf Common Man Roadside with a drive through. There will be 26 parking spaces and 10 spaces at the 5 fueling dispenser islands. The drive through will have a regular lane and a mobile pick up lane. There will be 12 charging stations at the back for electric cars. They will be a combination of Tesla and universal. The storm water management system will have deep sunk catch basins, hydro dynamic separators, and an oil water separator tank in the back. After that it all goes into an underground detention system at the back of the property. From there it will go through a jelly fish treatment unit and then to the wetland. The proposal will not impact any wetlands. The side area has a swale from the DOT culvert. There is a sewer easement in the back of the property that they have the rights to.

There is an existing sewer service through the wetland. It is an older service that is broken up. This proposal will be providing a new service that will be out of the wetland. The existing sewer service will be removed in the pavement area and abandoned in the wetland to prevent further impact. They will use silt socks, silt fencing and slope stabilization blankets for erosion control during construction. They incorporated feedback from the Conservation Commission. There will be new trees, bushes, and ornamental grasses on the site as well. There will be additional wetland plantings on the slope too. This needs to go to DES and DOT. They went to the ZBA to allow for parking between the building and the road. All requested variances were granted. There will still be two driveways, but one will be an entrance only and the other an exit only. They are requesting a waiver for two driveways and for the curve of the curb on the exiting lane. It is 34 feet, and 40 feet is required there. They are also asking for a wetland CUP. This project will be decreasing the amount of impervious on the site by about 3,000 sf. The impervious in the buffer will be reduced by 9,000 sf. The existing pavement is against the wetland line. They will be increasing the setback on the side and back edge. They are requesting a CUP for a drive through in the Gateway Corridor District. There currently is one on the site, so it will not be a new impact.

City Council Representative Moreau questioned how they would ensure they were keeping the plowed snow out of the buffer. Ms. Doucette responded that they will primarily use the front area for snow removal and the side area will be the secondary storage area. There is a fence in the back to make sure that no trash goes to the wetlands. City Council Representative Moreau requested that they use silt socks instead of a silt fence. Ms. Doucette agreed.

Mr. Hewitt questioned if trucks would be able to make the turn at the 34-foot curve. Ms. Doucette responded that there was more than enough radius there for that. They have run the truck turning templates and it works. Mr. Hewitt questioned why all the EV charging stations would not be installed right away. Mr. Pernaw responded that they have a deal in place with Tesla and those will be developed during construction. They also have an agreement with charge point and they are waiting for DES to release the funds for that.

Chairman Chellman questioned if the charging stations were included in the trip generation analysis. Ms. Doucette responded that looked at a convenience store and gas station use. They also looked at the trips for the square footage of the building and used the higher amount.

## **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) City Council Representative Moreau moved to find that the application meets the criteria set forth in 10.1017.50 and to grant the Wetland Conditional Use Permit, seconded by City Manager Conard with the following stipulations:

1.1. The applicant will follow NOFA standards for land care.

1.2. For snow storage the applicant will utilize the front area as the primary area and the snow storage area shown on the North side as the secondary snow storage area.

1.3. The applicant shall require all winter maintenance personnel to have a Green Snow Pro certification.

1.4. Applicant shall increase the number of trees to be planted in the area where pavement is proposed for removal.

1.5. Area shown on plan as to be loam and seeded shall be planted with a wetland buffer seed mix and mowed annually.

1.6. Applicant shall install signs along the edge of wetland to inform the public that this is a sensitive natural area.

1.7. Applicant use a pervious material for the patio.

1.8 Applicant shall use either silt socks or similar product rather than a silt fence for erosion control.

City Council Representative Moreau commented that this was an overall improvement to the site.

The motion passed unanimously.

2) City Council Representative Moreau moved to determine the placement of the transaction window as required in section 3.6.1.3 of the Site Plan Review Regulations does not nullify the spirit and intent of the City's Master Plan of the Site Plan Regulations and to grant a waiver to the distance requirements in section 3.6.1.3 of the Site Plan Review Regulations, seconded by City Manager Conard.

City Council Representative Moreau commented that there was already a drive through there now, and this was a better set up.

The motion passed unanimously.

3) City Council Representative Moreau moved to find that the application meets the criteria set forth in section 10.243 of the Zoning Ordinance and grant the Conditional Use Permit for a drive through facility as an accessory use, seconded by City Manager Conard.

The motion passed unanimously.

4) City Council Representative Moreau moved to approve the Site plan, seconded by City Manager Conard with the following condition:

Conditions to be satisfied subsequent to final approval of site plan but prior to commencement of any site work or construction activity:

- 4.1 Any easement plans and deeds for which the City is a grantor or grantee shall be reviewed and approved by the Planning and Legal Departments and accepted by City Council.
- 4.2 The site plan and any easement plans and deeds shall be recorded at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.
- 4.3 Associated recording fees shall be paid to the City prior to recordation.
- 4.4 That the turning radius from the transaction window of the driver-through meet the minimum requirements provided in section 3.6.1.3 of the Site Plan Regulations.

Condition Subsequent:

- 4.5. After connections are terminated and created, the applicant will video inspect the two spots to confirm that no groundwater is infiltrating.

The motion passed unanimously.

#### **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 request of Mastoran Restaurants Inc. (Owner), and Granite State Convenience (Applicant), for property located at 2255 Lafayette Road requesting Wetland Conditional Use Permit Approval according to section 10.1017.5 of the Zoning ordinance to convert an existing fast food restaurant site into a retail fueling station and a convenience store/sandwich shop with drive-through window and a five fuel pump dispenser island and associated paving parking and stormwater system upgrades for the entire site creating an overall disturbance in the wetland buffer of 33,555 square feet. Said property is located on Assessor Map 272 Lot 3 and lies within the Gateway Corridor (G1) District. (LU-22-13)

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

This was voted on under Public Hearings – Old Business Item A.

- B. 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)

### **SPEAKING TO THE APPLICATION**

Eric Weinrieb from Altus Engineering spoke to the application. The lot is .34 acres and has frontage on Marcy St., Pray St. and Partridge St. They are 53 sf short of having the legal area for 3 lots, so the subdivision is for 2 oversized lots instead. TAC recommended approval with 7 conditions, and they have addressed all 7 of them. They did not have any objections to the stipulations in the staff memo.

City Council Representative Moreau questioned what the address would be. Mr. Weinrieb responded that they will go with the recommendation from the fire department to be clear for 911 calls. They want them to be sent to the driveway.

Mr. Hewitt questioned if the site plan would address abutter encroachment on the new lot. Mr. Weinrieb responded that it was an existing encroachment. There is no change proposed to that. They have a good relationship with the abutter and historical rights. Ms. Zendt added that they would only address that at the request of the property owner who is being encroached upon. No one has made that request.

### **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) The Board voted to grant preliminary and final subdivision approval with the following stipulations:

Conditions to be satisfied subsequent to final approval of site plan but prior to commencement of any site work or construction activity:

- 1.1 Address for Lot 2 will correspond to Partridge Street until such time when a second driveway is provided on Pray Street.
- 1.2 Lot numbers as determined by the Assessor shall be added to the final plat.
- 1.3 Property monuments shall be set as required by the Department of Public Works prior to the filing of the plat.
- 1.4 GIS data shall be provided to the Department of Public Works in the form as required by the City.
- 1.5 The final plat and all easement deeds shall be recorded concurrently at the Registry of Deeds by the City.
- 1.6 Any easement plans and deeds for which the City is a grantor or grantee shall be reviewed and approved by the Planning and Legal Departments and accepted by City Council.
- 1.7 Associated recording fees shall be paid to the City prior to recordation.

The motion passed unanimously.

- C. The request of **RIGZ Enterprises LLC (Owner)**, for property located at **806 Route 1 Bypass** requesting Site Plan Review for construction of 400 square feet of additional commercial space and site improvements. Said property is located on Assessor Map 161 Lot 43 and lies within the Business (B) District. (LU-22-81)

### **SPEAKING TO THE APPLICATION**

Alex Ross spoke to the application. The proposal is for a simple, small addition to the rear of the building. The site is on the Bypass against the Stark St. Bridge. Currently it is the City Tobacco and Beverage Center. It is a fully developed site but has never been to a Board before. There is a lot of opportunity for site improvement with landscaping, parking, fencing, and lighting. They have implemented all TAC feedback. The rear of the building has some odd jogs and they would like to square that off with the addition. Currently a drain line passes under the existing building. They worked with DPW on the best solution to re-route it. The drain line will go around to the rear of the building. They have added landscaping to bring the site into open space conformance. They worked with the rear abutter about their concerns with the dumpster location.

Chairman Chellman questioned where snow storage would be. Mr. Ross responded that there was room along Stark St. There is a lot of large gravel and rip rap area from the bridge, so it would be a good place to store snow.

### **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) Mr. Mahanna moved to determine the requested waiver do not nullify the spirit and intent of the City's Master Plan of the Site Plan Regulations and to grant the following waiver: Waiver of Site Plan Review regulations section 4.3.5 to locate a dumpster 12.2 feet from the property line where 20 feet is required, seconded by City Council Representative Moreau.

Mr. Mahanna commented that it was good to move the dumpster away from the residents.

The motion passed unanimously.

- 2) Mr. Mahanna moved to grant Site Plan approval, seconded by City Council Representative Moreau with the following stipulations:

Conditions to be satisfied subsequent to final approval of site plan but prior to commencement of any site work or construction activity:

2.1 The site plan and any easement plans and deeds shall be recorded at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.

2.2 Associated recording fees shall be paid to the City prior to recordation.

2.3 Light pole labels on the utility plan will be correct to reflect appropriate numbering and include LP3 and LP5 consistent with stipulation requiring light Pole 3 (LP3) located at the rear of the building to be limited to a height of 16' with cut off shields.

The motion passed unanimously.

- D.** The request of **Artwill LLC (Owner)**, for property located at **437 Lafayette Road** requesting Preliminary and Final Subdivision approval to subdivide one existing lot with 65,365 square feet of lot area and 123.92 of frontage on Lafayette Road and 336.61 feet of frontage on Andrew Jarvis Drive into three lots as follows: Proposed Lot 1 with 18,434 square feet of lot area and 123.92 feet of frontage on Lafayette Road and 129.57 feet of frontage on Andrew Jarvis Drive, Proposed Lot 2 with 16,606 square feet of lot area and 102.04 feet of frontage on Andrew Jarvis Drive, and Proposed Lot 3 with 30,325 square feet of lot area and 107 feet of frontage on Andrew Jarvis Drive. Said property is located on Assessor Map 229 Lot 1 and lies within the Single Residence B (SRB) District. (LU-22-82)

City Manager Conard moved to consider items IV. D and IV. E together, seconded by City Council Representative Moreau. The motion passed unanimously.

### **SPEAKING TO THE APPLICATION**

Justin Asic and Corey Colwell from TF Moran, Joe Calderola, and Derek Durbin spoke to the application. Mr. Asic commented that the proposal was for a 3-lot subdivision. They went to TAC in May and addressed all their comments. There is also a site plan review for a proposed ADU. The site contains a single-family one-story dwelling unit. It is located south of Andrew Jarvis Dr. The first lot is at the intersection of Artwill Ave. and Lafayette Rd. It will have a 2-story single family dwelling unit. The second lot will have the existing house. The third lot will be at the end of Artwill Ave. It will have a one-story single-family dwelling unit and an attached ADU. Other improvements include landscaping, grading, storm water management, and utility installation. The utilities on the existing house will remain the same except the sewer will tie into Artwill Ave. The water and electric will come off Andrew Jarvis Dr. and the sewer will go along Artwill Ave. They are proposing a gravity sewer line on lot 1 and running it parallel to the forced main that will tie into the manhole at the intersection. The existing site pitches from a high point along Andrew Jarvis Dr. to a low point on the lot. The intent is to match the existing patterns as much as possible. The site has well drained soils. There will be a total of 4 rain gardens. They will reduce the road

width to 26 feet. They will only be reducing pavement on the north side of the road to avoid abutter impact. The attached garage on site will also be removed.

City Council Representative Moreau questioned if they were extending the length of Artwill Ave. to get the third lot. Mr. Asic confirmed they were extending it by 15 feet to add more space for the ADU parking. It will be adjacent to the principle driveway. City Council Representative Moreau questioned if they were closing off the entrance to Andrew Jarvis Drive. Mr. Asic confirmed they were closing it with a sidewalk.

Mr. Mahanna questioned if this was a city or private road. Mr. Asic responded that it was a private road. Mr. Mahanna questioned if there was an existing maintenance agreement with the house there. Mr. Durbin responded that there was not. It is owned by Artwill LLC. One stipulation from TAC is to put an agreement in place. They have drafted that and sent it to the other owners for review. There has not been a lot of feedback from them yet. Mr. Mahanna questioned who would own it after the subdivision was complete. Mr. Durbin responded that the road is currently owned by the LLC. The 3 lot owners will own the road subject to the rights of the other 2 existing owners on the street. They are expanding their rights by reserving easements for them if they decide to connect to the forced main. The 3 lots would pay for maintenance and have decision making power. The other lots are benefiting lots.

Chairman Chellman questioned if the length would stop at the extended point or could it continue further east. Mr. Asic responded that it stops there. Chairman Chellman questioned if anyone else had easement rights over there. Mr. Calderola responded that in a previous deed it states that the church could open a driveway from their parking lot onto that road, but they have not done that.

Mr. Hewitt questioned if a low-pressure sewer would be serving these lots. Mr. Asic responded that only lots 2 and 3 would be. Lot 1 will be gravity fed. Mr. Hewitt clarified that the road maintenance and ownership of the road would be on all three of the lot owners. Mr. Asic confirmed that was correct.

Mr. Mahanna questioned if mail would be delivered to all the houses. Mr. Asic responded that each new lot will have a separate mailbox. City Council Representative Moreau added that they also get trash pickup. It is the same set up as Chevrolet Ave. It's something the City has done by practice but they have not taken on ownership of the road. Mr. Durbin added that at the creation of this road it was recognized by City Council that the City would have certain rights. One was to do the plowing and they would have certain maintenance obligations on that road. It looks like a public street in many respects, but the ownership was left private. Mr. Mahanna questioned where the liability for the road was. Mr. Durbin responded that it lies with the property owner of the existing lot. There are other examples like this throughout the city. It was a negotiated agreement between the City and the property owner at that time. It is not something that can be changed without Council approval. They are not proposing any changes to that. The intent is to keep the existing relationship in place. They will just be providing more clarity for the existing owners.

Mr. Asic commented that the proposed ADU is on lot 3. It will be attached to the principle dwelling unit on the east side. It will be 747 sf and have the same finished floor elevation as the principle dwelling unit. Prior to coming to the Planning Board, they received comments. In the submission they included a cover letter that lists the criteria in the zoning ordinance and found that 14 items were applicable to this proposed ADU. They listed the criteria and how they were conforming to each one. Four of the criteria were not on it. The first states that the exterior design should be consistent with the principle unit. Mr. Asic confirmed they will match and be consistent. The second is that the site plan shall provide open space landscaping and off-street parking for both structures. Mr. Asic commented that the proposed ADU on lot 3 currently has 26% more open space than required. They are proposing landscaping in the back and front of the house. There is an existing buffer of trees and vegetation along the property line to the east. There is also adequate parking for both. The proposal includes a 12' by 22' foot parking space for the ADU. There is a separate driveway for the principle unit. The third is that the ADU will not result in excessive parking, noise, or traffic. Mr. Asic commented that they were only providing one parking space for the ADU. There are a total of 5 houses using the road. It should not increase traffic or congestion. There should not be any excessive noise. The fourth item is that the ADU must maintain a compatible relationship to the adjacent property and not reduce their privacy. Mr. Asic noted that there is a vegetated buffer between the two lots. The ADU is 20-30 feet from the property line. The property to the east is the church and a parking lot. It should not reduce privacy.

Mr. Almeida questioned if this proposal would limit abutting property owners from building on their lots. Mr. Asic responded that that it should not prohibit any future use. They are trying to add benefits to the lots across the street. There should not be any adverse impact to the lots.

## **PUBLIC HEARING**

Arthur Karekas from St. Nicholas Greek Orthodox Church commented that they enjoy a right of way from Artwill Ave. into their parking lot. There are rights in the deed that have not been addressed. They have a right of first refusal for a piece of property 50 feet wide and 170 feet long. It is intended to connect Andrew Jarvis Dr. to Artwill Ave. along the border of the church. That right of first refusal was never presented to the church. The Planning Board should not approve this application.

Chris Chase of 34 Artwill Ave. commented that in the early '70s Council voted to give the street the right to have trash and plowing pursuant to making Artwill Ave. a city road. They never followed up on that. Mr. Chase was concerned about reducing the street size because of the layout of the land. They have drain issues on their side of the street. They added a berm to prevent water from going into their basements. Mr. Chase has yet to see the maintenance agreement. Mr. Chase's main concerns were flooding and parking.

Butch Richie of 36 Artwill Ave. commented that their biggest issue was drainage. The road drops 8 feet and the berm has helped. They are narrowing the street but adding more impervious surface. The four rain gardens will dump to the low spot. It already pools there now, and it will have nowhere to go if it overflows. They should consider fire access when narrowing the road.

Also, a 2-inch water line runs under lot 1 and then it will be under a driveway. That needs to be considered.

Derek Durbin commented that the church's alleged first right of refusal is based on a deed from 1966. The property has transferred 3 times since 1966. More recently the property was actively marketed for some time before it was purchased by these owners. This is a civil issue and outside the jurisdiction of this Board. The applicant's position is that they have clearly lost any right had they had over the passage of time through 3 conveyances. Mr. Durbin did discuss this issue with Attorney Tim Phoenix who is representing the church. It is a weak claim from the church and nothing this Board should discuss and consider.

Justin Asic commented that the road width is currently 35 feet wide in certain sections. A private road doesn't need to be that wide. They worked with the fire department to determine the 26-foot width. They are adding houses and driveways, but they are looking to mitigate the net impervious area. There are existing drainage issues on the property. It naturally pitches to a low point. They did 9 test pits and found good infiltration rates. The rain gardens will result in a decrease of post development runoff volumes. They will be capturing flows and directing them to infiltration. They have outlet control structures during heavy storms. The 2-inch water service does run down the existing road and lot. They are reducing some pavement, but the waterline does stay under the impervious road and then under the proposed driveway to the water main. It is a small portion of the line and is already under a more traveled roadway. There should not be any issues with that. They can look to see if it needs to be deepened under construction.

Second time:

Arthur Karekas from St. Nicholas Greek Orthodox commented that Tim Phoenix did reach out and was told they did not want to discuss it. They were here to make their objection known.

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**

Chairman Chellman commented that the subdivision right of first refusal should be resolved in some fashion.

City Council Representative Moreau agreed. It has been transferred several times, which makes it a good legal case. It needs to be settled. That doesn't stop the Board from approving this. They are still subject to that possibility. The building will not be built if the right of first refusal.

Mr. Mahanna commented that he was not in favor. The title issues need to be resolved. The maintenance agreement needs to be finalized and the city vs. private road should be resolved as well.

Mr. Almeida questioned if the agreement was typically finalized before the application was approved. Ms. Zendt responded that there was a draft agreement. It would be executed before a building permit was issued. It would be reviewed by the legal department too.

Chairman Chellman commented that the applicants concerns about drainage have been addressed in the plan that was created by licensed engineers. Mr. Mahanna commented that 2 abutters were against it. Chairman Chellman responded that unless there was expert testimony refuting it the Board has to accept the information presented by experts. City Council Representative Moreau noted that they were allowed to request a third-party review if the Board did not trust the expert advice.

Mr. Mahanna questioned if they could question the deed easement agreement. City Council Representative Moreau responded that needed to be fought out in court between the parties. The City is not a party to that, so that is not our fight as a City.

Mr. Almeida commented that he was concerned about a drainage issue because it was not a City street. If an issue is created, then it is out of their control to correct it after is approved.

City Council Representative Moreau suggested that they request a postponement until the applicants have a chance to give evidence to the abutters that there will be proper drainage.

City Council Representative Moreau moved to continue consideration of all requests related to this item to the July 21<sup>st</sup> meeting with a request that the applicant meet with abutting property owners and discuss drainage plans for the proposed development and maintenance of the private road, seconded by City Manager Conard.

The motion passed unanimously.

- E. The request of **Artwill LLC (Owner)**, for property located at **437 Lafayette Road** requesting Site Plan Approval and Conditional Use Permit Approval as permitted under Section 10814.40 of the Zoning Ordinance to subdivide the lot and construct two new single-family dwellings (one includes an attached accessory dwelling unit) in addition to the existing single-family dwelling. Said property is located on Assessor Map 229 Lot 1 and lies within the Single Residence B (SRB) District. (LU-22-82)

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

This was voted on under Public Hearings – New Business item D.

- F. The request of **City of Portsmouth (Owner)**, for property located at **329 Heritage Drive** requesting Wetland Conditional Use Permit approval according to section 10.1017.5 of the

Zoning Ordinance to impact 1,490 square feet wetland buffer to replace equipment at an existing sewer pump station. Said property is located on Assessor Map 284 Lot 5 and lies within the Municipal (M) District. (LU-22-96)

### **SPEAKING TO THE APPLICATION**

Tyler Reese from the DPW and Jake Shactman from Wright and Pearce spoke to the application. Mr. Shactman commented that this was a CUP application to replace the pump station and it is necessary to convey the sewage. The new pump station benefits the City by improving reliability, access, and safety. The site demolition includes removing the existing pump station, shed, fencing, and piping. There are proposed impacts in the buffer, but no proposed impacts in the wetland. They will be removing 220 sf of impervious surface and installing piping. The permanent impacts include a new pump station, generator, electrical control cabinet, and proposed driveway. There will be some new plantings on the site. The new station is further away from the existing wetlands. There are native shrubs proposed for the vegetated buffer. There will be a native wetland seed mix outside of the fencing. There are storm water improvements proposed to offset the impervious area.

Chairman Chellman questioned why this was coming to the Planning Board because public utilities should be exempt for needing this permit. City Council Representative Moreau responded that they are exempt but do it to be transparent with applications.

Mr. Hewitt questioned if everything was being demolished on the site. Mr. Reese responded that everything except the existing wet well would be.

### **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) City Council Representative Moreau moved find the application satisfies the criteria set forth in Section 10.107.50 of the Zoning Ordinance, seconded by Mr. Mahanna.

The motion passed unanimously.

- 2) City Council Representative Moreau moved to grant the Wetland Conditional Use Permit as presented, seconded by Mr. Mahanna.

The motion passed unanimously.

- G.** The request of **Joan S. Rice Revocable Trust (Owner)**, for property located at **460 FW Hartford Drive** requesting Wetland Conditional Use Permit Approval according to

section 10.1017.5 of the Zoning ordinance to temporarily impact 275 square feet and permanently impact 5.2 square feet of inland wetland buffer to install a new fence where the impact is the wooden fence posts. Said property is located on Assessor Map 249 Lot 17 and lies within the Single Residence B (SRB) District. (LU-22-69)

### **SPEAKING TO THE APPLICATION**

John Rice spoke to the application. The request was to install a split rail fence in the backyard. It will be 220 feet. The split rail design will be attractive. The abutters support the fence. It is needed to contain the dog.

Mr. Hewitt questioned if there would be a chain link fence along the split rail. Mr. Rice responded that it would be a vinyl mesh.

### **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) Mr. Mahanna moved to find the application satisfies the criteria set forth in Section 10.107.50 of the Zoning Ordinance, seconded by City Council Representative Moreau.

The motion passed unanimously.

- 2) Mr. Mahanna moved to grant the Wetland Conditional Use Permit as presented, seconded by City Council Representative Moreau.

The motion passed unanimously.

### **V. CITY COUNCIL REFERRALS**

- A. Hold a Public Hearing and consider a recommendation to the City Council for Zoning Ordinance Amendments to Building Height standards.

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

City Council Representative Moreau suggested postponing this to the Wednesday June 29, 2022 meeting to give the Board more time to look at the last minute revisions.

Chairman Chellman agreed.

Mr. Hewitt questioned if it should be a separate meeting independent from the wetland presentation. Chairman Chellman responded that they should have enough time to address the zoning before the CUP training. City Council Representative Moreau agreed. These revisions are not major changes. It is mostly clean up. There are major changes coming that will need separate meetings. This will still go to City Council and have a public hearing there as well.

City Council Representative Moreau moved to continue the public hearing and postpone consideration of the proposed amendments to the Portsmouth Zoning Ordinance to the Wednesday June 29<sup>th</sup>, special meeting of the Planning Board at 6:00 pm, seconded by Mr. Almeida.

Mr. Hewitt requested that they do not receive any more changes before that meeting. Ms. Zendt responded that this round of last-minute changes was a result of requests from Planning Board members. Moving forward they may want to have a comment cut off time to help allow for review. Chairman Chellman noted that any further changes can come to the meeting Wednesday.

The motion passed unanimously.

## **VI. OTHER BUSINESS**

### **A. Chairman's Update/Discussion**

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

## **VII. ADJOURNMENT**

City Manager Conard moved to adjourn the meeting at 9:30 p.m., seconded by Mr. Harris. The motion passed unanimously.

Respectfully submitted,

Becky Frey,  
Secretary for the Planning Board