

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

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

7:00 PM

September 15, 2022

MINUTES

MEMBERS PRESENT: Rick Chellman, Chairman; Karen Conard, City Manager; Joseph Almeida, Facilities Manager; Assistant City Engineer; Beth Moreau, City Councilor; Greg Mahanna; Peter Harris; James Hewitt; Andrew Samonas, Alternate

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ALSO PRESENT: Susan Morrell, City Attorney; Beverly M. Zendt, Planning Director; Stefanie Casella, Planner 1

MEMBERS ABSENT: Jayne Begala, Corey Clark, Vice Chair; Franco DiRienzo, Alternate

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REGULAR MEETING 7:00pm
Meeting started at 7:07pm

**I. SUMMARY OF LEGISLATIVE CHANGES ENACTED THROUGH HB1661
AND THE IMPACT TO LAND USE BOARDS**

Chairman Chellman commenced discussion on this topic at timestamp 7:27 in the recording. Retired City Attorney Robert Sullivan presented this topic, first with a correction in his introduction that he is no longer the City Attorney. He presented on a new state law that came into effect for the first time at this Planning Board meeting. This statute, HB 1661, regulates among other things, technical education in school districts, the design, engineering and sitework for a new legislative parking garage in Concord, a special fund for establishes a special fund for the administration of opioid treatment programs, establishes a pilot program for individuals with developmental disabilities, revises the Department's authority to recover unauthorized payments by the state, repeal certain reporting requirements establishes investigatory procedures and licensing criteria for recreational camps allows for alternative service and process in juvenile matters creates a separate category of foster care licenses for kinship Care Homes and a total number of 27 other unrelated items. The section of this new law relating to the Planning Board can be found in Section 272:73 'Planning and Zoning: Administrative and Enforcement Procedures Issuance of Decisions'. This section on re-adopts significant portions of the laws which already regulate the conduct of Planning Boards in making decisions but adds that zoning board decisions and/or land use regulatory board decisions shall include specific written findings

of fact that support the decision. Failure of the board to make specific written findings of fact supporting a disapproval shall be grounds for automatic reversal and remand by the Superior Court upon appeal. In accordance with the time period set forth in RSA 6775 or RSA 677:15 unless the court determines that other factors warrant the disapproval. The findings of fact that boards will have to present must support or oppose the criteria listed in the ordinance that you are supposed to apply in connection with any particular application.

At timestamp 32:15 in the recording, Chairman Chellman announced that Planning Board Member Samonas, had arrived and would be stepping into member Jayne Begala's seat to vote on upcoming matters.

Chairman Chellman opened the floor to questions for Attorney Sullivan at timestamp 32:25.

Councilor Moreau (timestamp 32:28) asked a clarifying question on whether there would need to be changes to needing a majority vote/two thirds vote. It was confirmed that a majority is still necessary. Councilor Moreau asked if they need to have findings of fact on determinations of completeness to which Attorney Sullivan replied no, just findings of fact that support elements of the criteria for decision-making. Councilor Moreau asked if they are allowed under statute to limit the length of meetings to which Attorney Sullivan replied that they are allowed to, but it may increase the number of meetings needed.

Planning Board Member James Hewitt (timestamp 34:49) asked if a Planning Board member could offer their own criteria at the meeting if it is not listed on the handout ahead of time. Planning Director Zendt responded that there could not be amendments to the criteria because they are established by regulations in the code. A member could, however, amend the column that says, 'Supporting Information'. Introducing new criteria would not be consistent with the regulations. Another criteria could be offered but it would have to be directly from the ordinance. Chairman Chellman (36:05) stated that some of the criteria are very broad and can adhere to many, and sometimes all, the City regulations in which case they may not be listed by Planning staff. The discussion of this item ended at timestamp 37:25.

II. APPROVAL OF MINUTES

A. Approval of the August 18, 2022 meeting minutes.

Discussion of the minutes from the previous meeting commenced at timestamp 37:33 in the recording. At timestamp 37:39 Councilor Moreau made a motion to accept the minutes as presented. Joseph Almeida seconded the motion. Motion passed unanimously.

III. DETERMINATIONS OF COMPLETENESS

SUBDIVISION REVIEW

- A. The request of **Hemlock Way Realty Investments, LLC (Owner)**, for property located at **0 Patricia Drive** requesting Preliminary and Final Subdivision approval to subdivide one (1) existing lot into two (2) lots.

Discussion for this proposal commenced at timestamp 37:48 in the recording. The Board voted to determine that the application is complete according to the Subdivision Regulations, (contingent on the granting of any required waivers) and to accept the application for consideration. At 38:03, Councilor Moreau made a motion to approve the request for Preliminary and Final Subdivision approval. At 38:10, Planning Board Member Samonas seconded the motion. The motion passed unanimously.

SITE PLAN REVIEW

- A. The request of **Bromley Portsmouth, LLC (Owner)**, for property located at **1465 Woodbury Avenue** requesting Amended Site plan Review Approval for the demolition of the existing structure, parking, and utility infrastructure.

Discussion for this proposal commenced at timestamp 38:15 in the recording. The Board voted to determine the application is complete according to the Site Plan Review Regulations, (contingent on the granting of any required waivers under Section IV of the agenda) and to accept the application for consideration. At 38:31 Planning Board Member Mahanna made a motion to accept this proposal which was seconded by Councilor Moreau. 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. **APPLICATION WITHDRAWN** The request of **Coventry Realty, LLC (Owner)**, for property located at **111 State Street** requesting a Conditional Use Permit approval in accordance with section 10.1112.14 of the Zoning Ordinance to allow zero (0) parking spaces where 1.3 are required. Said property is located on Assessor Map 107 Lot 50 and lies within the Character District 4 (CD4) and the Historic District. (LU-22-125)

APPLICATION WITHDRAWN

At timestamp 38:39 Chairman Chellman announced that this application was withdrawn. No action taken by the board.

DISCUSSION AND DECISION OF THE BOARD

- B. The request of **Hemlock Way Realty Investments, LLC (Owner)**, for property located at **0 Patricia Drive** requesting preliminary and final subdivision approval to subdivide a lot with an area of 137,549 s.f. and 414 ft. of continuous street frontage on a private road into two (2) lots as follows: Proposed lot 1 with an area of 92,908 s.f. and 150 ft. of continuous street frontage on a private road; and Proposed Lot 2 with an area of 44,641

s.f. and 264 ft. of continuous street frontage on a private road. Said property is shown on Assessor Map 283 Lot 11 and lies within the Single Residence A (SRA) District. (LU-22-172)

Chairman Chellman introduced this proposal at 38:35 in the recording.

SPEAKING TO THE APPLICATION

Mike Garrepy of Hemlock Way Realty Investments and of Garrepy Planning Consultants spoke to the application. Planning Director Zendt added at 42:47 that the Technical Advisory Committee had not made any new comments, the applicant had submitted a letter addressing how they had met all of the previous Planning Board stipulations and the reason that this was held up was due to the need for adequate notice to abutters of this project for a release deed.

Planning Board Member Mahanna asked a clarifying question (44:06) to the Planning Director asking if the Planning Board held it up despite previously approving it to which the Planning Director clarified that the nature of a paper street held this up along with a prior stipulation requiring outreach to the abutters to inquire if they would waive their rights of ownership.

PUBLIC HEARING

At timestamp 46:13 Chairman Chellman opened the public hearing for this application. No members of the public spoke. Councilor Chellman closed the public hearing (46:32).

DISCUSSION AND DECISION OF THE BOARD

Chairman Chellman proceeded to read out (46:42) and start a discussion on the sample draft of the findings of fact for this application. These facts include:

1. Subject to rules and regulations, the application was reviewed and approved by TAC.
 - a. Board members were in consensus with this finding.
2. Recording of final plat, reviewed by TAC and found to be in compliance.
 - a. Board members were in consensus with this finding.
3. General requirements were met within the Subdivision Regulations under Section 6, this was reviewed by TAC and found to comply.
 - a. Board members were in consensus with this finding.
4. Design standards were met within the Subdivision Regulations under Section 7, this was reviewed by TAC and found to comply.
 - a. Board members were in consensus with this finding.

Chairman Chellman moved (49:10) to adopt the presented findings of fact as part of the application. The motion was seconded by Planning Board Member Mahanna.

Councilor Moreau moved (49:24) to find that the subdivision application meets the standards set forth and the subdivision regulations, and the supplemental information will be adopted as findings of fact as presented. This motion was seconded by Planning Board Member Mahanna. This motion passed unanimously.

Councilor Moreau made a motion (50:12) to grant the waiver to the residential street minimum standards to allow to the residential street minimum standards to allow 18 feet of pavement width where 32 feet is required. City Manager Conard seconded the motion (50:26). This motion passed unanimously.

Councilor Moreau made a motion (50:36) to approve the subdivision as presented with the preliminary and final subdivision with following five stipulations:

- 1) A release deed retaining public access and drainage rights to the City, be prepared for review and approval by the City Attorney.
- 2) The final plat and all easement plans and deeds, including the aforementioned private easement shall be recorded concurrently at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.
- 3) GIS data shall be provided to the Department of Public Works in the form as required by the City.
- 4) Associated recording fees shall be paid to the City prior to recordation. Any changes to the plan subsequent to approval must be identified in a letter and submitted to the city with the recordable plans.
- 5) Any site development (new or redevelopment) resulting in 15,000 square feet or greater ground disturbance will require the submittal of a Land Use Development Tracking Form through the Pollutant Tracking and Accounting Program (PTAP) online portal.

Planning Board Member Mahanna seconded the motion (50:49). This motion passed unanimously.

- C. The request of **Blus O’Leary Family Living Trust (Owner)**, for property located at **225 Wibird Street** requesting Conditional Use Permit Approval as permitted under Section 10814.40 of the Zoning Ordinance to construct an attached Accessory Dwelling Unit. Said property is located on Assessor Map 133 Lot 54 and located within the General Residence A (GRA) district. (LU-22-174)

Chairman Chellman introduced this item in the recording at 51:13.

SPEAKING TO THE APPLICATION

Starting at 51:40 in the recording, Ms. Arilda Dench came forward to speak to the application on behalf of the Blue O'Leary Family Trust. Mark O'Leary, the owner, was in attendance in the audience. Ms. Dench finished her presentation at the timestamp 1:08:38.

Councilor Moreau (1:08:50) asked the applicant to clarify which residence the lift would be going into, either the main residence or the ADU. The applicant responded that it will be used to get residents from the ADU into the main residence but could be used for handicapped accessibility in the future for the main residence.

Councilor Moreau also brought up (1:09:32) a potential issue of grading from Hawthorne Street down into the property and the potential stormwater issues that are directed towards the slab. Applicant responded that they will be hiring a stormwater engineer to create a stormwater plan for the property.

Planning Board Member Andrew Samonas (1:10:22) asked fellow board members to clarify that if the plan was to be approved, would it be approved as a handicap accessible ADU as part of the stipulation to which Planning Director Zendt responded that it will just be an approval of an ADU, with the handicap accessibility being supplemental information.

Planning Board Member Andrew Samonas (1:11:05) asked the applicant to go into further detail about other ADA compliant aspects of this design. The applicant responded with specific details from the floor plan for the ramp, door height and threshold, the turnaround within the bathroom, the bathroom sink compliance, etc. Planning Board Member Andrew Samonas then (1:13:44) followed up with a question on whether or not the kitchen, dining, and living space are designed to follow ADA guidelines. The applicant responded that they could be with placement of appliances and using correctly sized items.

Chairman Chellman asked (1:14:56) if the applicant felt that they could work with what they needed to do within the 750 square feet constraint, to which the applicant responded that they could despite it being tight. Chairman Chellman asked (1:15:05) to clarify that the space connecting the ADU and the house does not count as gross floor area to which the applicant confirmed.

PUBLIC HEARING

Chairman Chellman opened this proposal up to the public hearing at timestamp 1:15:27.

Mark & Robin Anderson of 25 Hawthorne Street spoke starting at timestamp 1:15:54. As abutters, Mark and Robin had previously raised issues with this proposal due to the previously proposed scale and non-compliance of the structure. Since being originally denied by the Board of Adjustments, Mark and Robin Anderson wanted to express their appreciation for the changes made to the proposal and the reduction of the direct impacts to their property. They are still concerned about the size of the project and how it might change the feel of the neighborhood. They feel that this project does not align with the intent of the ADU rule. They are concerned about the loss of open space in their neighborhood, the increase in density and the potential for a future short-term rentals in the ADU space.

Leslie Brenner of 34 Hawthorne Street spoke starting at timestamp 1:18:08. Ms. Brenner's home faces the property at 225 Wibird Street and she expressed concerns that the proposed ADU structure seemed out of line with traditional ADU structures and was much larger than necessary. She also expressed concern with future owners of the property that might use the ADU as a short-term rental which would be out of character for the neighborhood. There could be a stress on street parking and a loss of green space. There was mention of another abutter letter submitted to the board that mentioned possible impacts from light pollution which Ms. Brenner agreed with. Ms. Brenner requested that the Planning Board deny approval of this application.

Juliet Grant of 243 Wibird Street spoke starting at timestamp 1:23:29. Ms. Grant mentioned that her view may be interrupted in the future with the wall of the ADU and expressed confusion about if the future connection from the ADU to the house would be considered in the 750 square foot constraint for an ADU. Ms. Grant also wanted to know if a stormwater drainage report would need to be done before approval by the Planning Board of this project. Ms. Grant also expressed concerns about the size of the proposed ADU.

Michael McNeely of 205 Wibird Street spoke starting at timestamp 1:26:07. Mr. McNeely was concerned that the neighborhood and close abutters will be losing open space due to the construction of the ADU which may impact property values for the neighbors as well as flooding impacts due to his property being located downhill from 225 Wibird Street. Mr. McNeely also expressed concern for the potential of short-term rentals occurring in the ADU space for future owners.

Chairman Chellman closed the public hearing at timestamp 1:29:35.

DISCUSSION AND DECISION OF THE BOARD

Chairman Chellman brought up his concerns for the drainage (1:29:41).

Councilor Moreau mentioned (1:29:50) how she was confused between the ADU law that is in place and the one that is currently being changed.

Planning Director Zendt addressed (1:30:11) Councilor Moreau's comment by mentioning that there is no standard that addresses a drainage plan especially for single-family dwellings. They have occasionally requested that as a stipulation the drainage should be reviewed by Public Works. She would recommend that a professional engineer certify the stormwater management plan prior to the building permit and submit to Public Works.

Planning Board Member Mahanna asked (1:31:29) the Planning Director how many parking spots must be designated for an attached ADU to which she replied that one spot is required.

Planning Board Member Samonas asked (1:31:58) how the cars would be able to move freely in the proposed parking spaces as they seemed constrained. Chairman Chellman responded saying that both spots would be owned by the owner and that would be an owner management issue.

Planning Board Member Samonas brought up (1:32:39) how the abutters referenced the character of the neighborhood and the contextual reference of the ADU among the architecture of the neighborhood and he agreed with those statements.

Planning Board Member Harris mentioned (1:33:35) how he was struggling with the size of the ADU and how the square footage decides the parking allotment. Chairman Chellman responded (1:34:51) with a reference to Article 8 of the Zoning Ordinance in Section 10.814.70 which allows for a reconfiguration of or additional off-street parking for an ADU but he is wary of that allowance as it could increase the impervious surface. Chairman Chellman echoed what the abutters requested for a drainage plan, and he was not comfortable granting a conditional approval for this proposal.

Planning Board Member Hewitt echoed (1:35:53) what Planning Board Member Harris said about concerns for the number of parking spaces being based on square footage and apply the same number of bedrooms. He also mentioned his concerns for the architectural compatibility of the proposed structure compared to the neighborhood. He would like to see colorized renderings of the proposed structure.

Planning Director Zendt clarified (1:36:56) that Section 10.112.311 in Article 11 of the Zoning Ordinance requires a minimum number of off-street parking spaces which for areas between 500 and 750 square feet would be 1.0 spaces per unit and therefor this would meet the requirement.

Councilor Moreau reiterated (1:37:42) how the original idea set forth by the ADU rules was to have ADUs that looked like single-family homes but small connectors and breezeways can make some look like two homes or a duplex. The Councilor agreed that this proposal met all the requirements but she still is having a hard time approving this without the drainage issue being resolved.

Facilities Manager Joseph Almeida stated (1:39:15) that this proposal does meet all of the requirements, as Councilor Moreau stated. He confirmed that what is typically done with drainage concerns is that a licensed engineer will certify the drainage prior to a building permit. He sympathizes with the concerns about open space but reiterated that the proposal concerns someone's private property, it is not public space and this proposal meets the requirements of the ordinance.

Chairman Chellman stated (1:41:08) that he would like to see the drainage discussed at a public meeting.

Planning Board Member Hewitt made a motion (1:43:41) to continue this application to the next meeting of the Planning Board on October 20, 2022 with the conditions that a drainage report, prepared by a licensed NH engineer, be submitted along with colored renderings of the proposed ADU. Planning Board Member Harris seconded the motion (1:44:12). The motion passed unanimously.

- D. The request of Bromley Portsmouth, LLC (Owner), for property located at 1465 Woodbury Avenue requesting a Wetland Conditional Use Permit under section 10.1017**

of the Zoning Ordinance for the demolition of the existing structure, parking, and utility infrastructure to be replaced with lawn and erosion control measures to result in 4,760 square feet of disturbance in the wetland buffer area. Said property is shown on Assessor Map 216 Lot 3 and lies within the Gateway Corridor (G1) District. (LU-22-149)

Chairman Chellman introduced this proposal at timestamp 1:47:42.

City Manager Conard made a motion (1:48:26) to consider the two applications together from Bromley Portsmouth, LLC and then vote on them separately. Councilor Moreau seconded the motion (1:48:28). The motion passed unanimously.

SPEAKING TO THE APPLICATION

Nick Dewhurst from Bohler Engineering presented this application (1:48:39) on behalf of the owner.

Chairman Chellman inquired (1:51:01) about the preservation of the building to be demolished. Mr. Dewhurst responded (1:51:09) that the structural integrity of the structure is compromised and it is not compliant with code, making it beyond the point of restoration for his applicant.

Planning Board Member Mahanna asked a clarifying question (1:51:40) about whether the proposal was to remove an eyesore and replace it with grass. Mr. Dewhurst agreed (1:51:48). Planning Board Member Mahanna followed up with a question (1:51:50) on whether or not they have had a tenant for the last twenty years. Mr. Dewhurst responded (1:51:54) that he could not speak for the owner and that he did not himself know much on the history of the tenants in the building.

Planning Board Member James Hewitt asked (1:52:31) if this application went before the City's demolition committee. Mr. Dewhurst responded (1:52:47) saying that he believed that the reason the owner could not just pull a demolition permit was due to this application having to go through the Wetland Conditional Use Permit and Site Plan Amendment process due to the proximity to a wetland buffer.

PUBLIC HEARING

Chairman Chellman opened the public hearing at 1:54:41 in the recording. No members of the public spoke. Chairman Chellman closed the public hearing at 1:54:54 in the recording.

DISCUSSION AND DECISION OF THE BOARD

Documentation and preservation of the building's history during the demolition process was inquired about but it was discussed that those steps are already a part of the demolition committee's process.

At timestamp 1:56:27 Chairman Chellman asked the Board if they approved the findings of fact to which it was confirmed there were no additions or objections.

Planning Board Member Mahanna made a motion (1:56:49) to approve the wetland conditional use permit application as it meets the criteria and to adopt the supplemental findings of fact as presented. The motion was seconded by City Manager Conard at 1:57:05. The motion passed unanimously.

City Manager Conard made a motion (1:58:03) to vote to find that the application meets the criteria set forth in 10.1017.50 and to grant the Wetland conditional use permit as presented. This motion was seconded by Planning Board Member Harris (1:58:15).

- E.** The request of **Bromley Portsmouth, LLC (Owner)**, for property located at **1465 Woodbury Avenue** requesting Amended Site plan Review Approval for the demolition of the existing structure, parking, and utility infrastructure to be replaced with lawn and will incorporate erosion control measures. Said property is shown on Assessor Map 216 Lot 3 and lies within the Gateway Corridor (G1) District. (LU-22-149)

SPEAKING TO THE APPLICATION

Nick Dewhurst (see above in Section D).

PUBLIC HEARING

(Reference Section D).

DISCUSSION AND DECISION OF THE BOARD

(Reference Section D for discussion).

Planning Board Member Mahanna made a motion (2:01:53) to approve the site plan application as it meets the criteria set forth in section 2.9 of the Site Plan Review Regulations and to adopt the supplemental information as findings of facts as amended and read into the record. This was seconded by Planning Board Member Almeida (2:02:22). This motion passed unanimously.

City Manager Conard made a motion (2:02:38) to grant amended site plan approval as presented. Planning Board Member Almeida seconded the motion. This motion passed unanimously.

V. OTHER BUSINESS

- A.** Presentation on the Parking Supply and Demand Analysis Study

The City will be seeking proposals from qualified consulting firms to study the supply and demand for parking in downtown Portsmouth. The study will address, assess, and identify current and alternative approaches to ensure adequate parking supply, inform future public investments, and guide policy choices and zoning updates including strategies that optimize utilization of parking facilities in the parking structure, cultivate

mode shift, and mitigate induced parking demand where possible and make effective use available in future technology.

Presentation began at 2:04:20 by Benjamin Fletcher, Director of Parking.

Planning Board Member Hewitt inquired (2:07:07) when the last parking study was done. Mr. Fletcher responded that it was 2012.

Planning Board Member Hewitt inquired (2:07:44) if the boundaries would be the same as the previous study. Mr. Fletcher responded yes.

Councilor Moreau asked (2:08:01) if this study area could be expanded to the neighborhoods that also surround the downtown. Mr. Fletcher noted that most of the studies are based off of CBG but attention is paid towards the areas that generate revenue where pricing and policies can be deployed to mitigate demand. He sees no reason why the map of the study area couldn't change.

Planning Board Member Harris mentioned his concerns (2:09:16) for residents that have their on-street parking spaces taken by people working downtown that have to park five or six blocks outside the downtown. Mr. Fletcher responded (2:09:55) and mentioned that there is a downtown employee program for parking.

Chairman Chellman asked (2:14:00) if the municipal lot and the parking down by Prescott Park was excluded from the site map. Mr. Fletcher responded that the map was from 2012 and he did not see a reason to alter it but that could be up for discussion. Those two lots were excluded because they were not commercial lots. Chairman Chellman followed up his question to ask (2:15:31) if the Foundry Garage will be included which Mr. Fletcher responded yes.

Chair Chellman asked (2:15:53) what the timeline would be for the RFP being published. Mr. Fletcher responded that they are trying to get it out this month pending approval from various departments.

Mr. Hewitt requested (2:21:16) that the presentation by Mr. Fletcher be posted in the meeting package.

No action was taken by the board.

B. Chairman's Updates and Discussion Items

Planning Board Member Hewitt inquired (2:19:01) as to whether there were any updates on the West End Yards parking demand study. Planning Director Zendt responded saying that that the original stipulation was not asking for a study but for them to share their data. Planning Board Member Hewitt remembered (2:19:58) that he corrected the minutes at the following meeting in February to include the four stipulations he had previously brought up.

No action was taken by the board.

VI. ADJOURNMENT

The meeting was adjourned at 9:24 pm.

Respectfully submitted,

Kate Homet,
Acting Secretary for the Planning Board