

**PLANNING BOARD
PORTSMOUTH, NEW HAMPSHIRE**

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

7:00 PM

February 16, 2023

MINUTES

MEMBERS PRESENT: Rick Chellman, Chairman; Corey Clark, Vice Chair; Karen Conard, City Manager; Joseph Almeida, Facilities Manager; Assistant City Engineer; Beth Moreau, City Councilor; Peter Harris; James Hewitt, Members; Jayne Begala; Andrew Samonas, Alternate

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ALSO PRESENT: Peter Stith, Principal Planner; Nicholas Cracknell, Principal Planner

MEMBERS ABSENT: Greg Mahanna, Member

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*Items in brackets [] denote timestamp of recording

[7:10] The meeting began.

I. APPROVAL OF MINUTES

- A. Discussion of proposed amendments of the **December 15, 2022** minutes, and approval of the **January 19, 2023** and **January 30, 2023** meeting minutes.

[7:44] Councilor Moreau made a motion to approve the December 15th, 2022 minutes along with the January 19th and 30th, 2023 minutes as presented. The motion was seconded by Vice Chair Clark. The motion passed unanimously.

II. DETERMINATIONS OF COMPLETENESS

SITE PLAN REVIEW

- A. The request of **One Market Square LLC (Owner)**, for property located at **1 Congress Street** requesting Site Plan Review approval for the partial demolition and expansion of the existing structure to construct a 3-story mixed-use building with

58,780 square feet of gross floor area, 12,080 square foot building footprint, 13 parking spaces, and associated onsite and offsite improvements. (LU-22-12)

DISCUSSION AND DECISION OF THE BOARD

[8:28] Vice Chair Clark made a motion to determine that the application was complete according to 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. The motion was seconded by Councilor Moreau. 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. REQUEST POSTPONE** The request of **Liberty Mutual Insurance Co. (Owner)**, for property located at **225 Borthwick Avenue** requesting a Wetland Conditional Use Permit under section 10.1017. This project proposes shoreline stabilization work for two existing ponds on site with erosion impacts. This project proposes stabilizing the slopes with an extensive native vegetation planting plan which will occur along the slope and enhance the vegetated buffer. Said property is shown on Assessor Map 240 Lot 1 and lies within the Office Research (OR) District. **REQUEST POSTPONE** (LU-22-212)

DISCUSSION AND DECISION OF THE BOARD

[8:46] Chairman Chellman announced the request to postpone this application to the March meeting. City Manager Conard made a motion to postpone the application. Vice Chair Clark seconded the motion. The motion passed unanimously.

[9:24] Ms. Begala commented that she would prefer to have a specific reason for postponement other than being 'held up'.

Mr. Stith noted that they are currently being held up by their state wetland permit.

- B. Phase II Regulatory Amendments** – The Planning Board will consider a recommendation to City Council to adopt amendments to Article 8 Supplemental Use Standards: Section 10.440 Table of Uses, Section 10.814 Accessory Dwelling Units, and Section 10.815 Garden Cottages; Article 11 Site Development Standards: Section 10.1110 Off-Street Parking; and Article 15 Definitions related to Accessory Dwelling Units and Garden Cottages.

SPEAKING TO THE APPLICATION

[2:05:37] Nicholas Cracknell came to present this presentation where previously Richard Taintor had left off in the last meeting. Mr. Cracknell presented on the revisions made to the ordinance

as a by-product of the conversations made during the January meeting. He also discussed some of the follow up comments from the Board and members of the public that had come up recently. He outlined the proposed changes to the ordinance as well as the most recent revisions since the last meeting which covered ADU sizes, parking, architectural standards and the review and approval process.

[2:25:16] Mr. Samonas noted that the language ‘aiding and meeting but not overwhelming infrastructure and solving housing needs’ should be further refined and consistent with the mission of enabling the Board to make decisions in the spirit of the ordinance to help meet housing needs in the City. He also inquired whether or not they could modify the size of the unit without having to deny outright. Mr. Cracknell noted that units could not be made to be over 750 s.f. if that version of the ordinance was adopted and the volume of the building could not be more than 1600 s.f. if it was multi-storied but it still could only have a 750 s.f. unit in it.

[2:32:20] Councilor Moreau made a suggestion to remove the exceptions listed and only use the height exception of no more than twenty two feet.

[2:34:05] Mr. Almeida reiterated the fact that the purpose of these amendments was to remove barriers and simplify the ADU process to make it more clear and flexible. He wanted a more simplified analysis on the proposed amendments to address whether or not the changes made the process harder or simpler. Mr. Cracknell argued that removing the discretion would make it easier on the public and the applicant so that they don’t feel the need to come in and argue for their proposed sizes.

[2:36:47] Mr. Hewitt asked for clarification on why the term GFA changed to GLA. Mr. Cracknell responded that the gross living area (GLA) is something that is very easy to define. For gross floor area (GFA) which is the current standard, it is not clear where the ADU is within the building. He believed it would be more helpful and enforceable to know exactly where the ADU will be placed.

[2:39:18] Ms. Begala commented on Section 10.440 in the table of uses how it still states that there are four categories of detached ADU’s but it should state three. In the purpose and eligibility section, the first paragraph should read more explicitly about what it is and is not for. She believed the term ‘principal’ structure or residence should be changed to ‘legal’ structure or residence. In Section 10.814.33 she wanted to see the negative (‘not’) language removed due to its confusion and in the next section would like to see clarification on the garage standards. In Section 10.814.26 there should not be the phrase “at least” for the parking space restriction. In Section 10.814.622 Ms. Begala would like to see more language about the character of a neighborhood for the architectural standards.

[2:47:51] Mr. Almeida mentioned his confusion about the need for language of the ADU’s matching the character of the neighborhood or existing structure, noting that the existing structure could be sub par and this language does not reflect what the Board is allowed to do in terms of architectural review. Chairman Chellman responded that there are not guidelines for most of the City but this would be establishing those guidelines and giving the Board authority for it. Mr. Cracknell emphasized that all of the Board members are qualified for architectural

review. A discussion commenced on the architectural guidance and the need for consistency, especially in single-family neighborhoods.

PUBLIC HEARING

[2:54:42] Chairman Chellman opened the public hearing.

[2:54:59] Petra Huda of 280 South Street spoke about needing the most up to date version of the amendments and went on to give grammatical comments and questioned Section 10.814.26 for parking, the purpose of the potential for a CUP is not clear. She noted that 'Use 1.211' and 'Use 1.212' could not be found in the text and need to be defined. She wanted clarification on who makes the final decision about door standards and had concerns about building footprint standards and some potential areas of redundancy and need for clarification in some sections.

[3:02:25] Liza Hewitt of 726 Middle Road expressed concern for the language of the amendments and appreciated the Board's commitment to getting it right. She noted some areas of change that may need clarification, such as phrases like 'entire building' changing to just 'building'. She would like to hear more of a discussion on the reduction of necessary lot sizes.

[3:05:03] Esther Kennedy of 41 Pickering Avenue appreciated this process going through the Planning Board and allowing for transparency to the public. Ms. Kennedy brought up the potential for people not to be able to afford ADU's if there are two dwellings on one property due to potential banking and loan requirements.

[3:08:36] Elizabeth Bratter of 159 McDonough Street would like to see more revisions done to clean up the language for clarity. She expressed support for ADU's as they could greatly help homeowners be able to make money and afford living in Portsmouth if they're able to rent.

DISCUSSION AND DECISION OF THE BOARD

[3:12:00] Chairman Chellman mentioned that he would like to see the Planning Board go through all of the amendments line by line together. Councilor Moreau mentioned that she was ready to move forward with a recommendation to the Council with amendments. Mr. Harris would like to see the presentation be submitted. Mr. Samonas would like to have one more meeting to go through each line to be sure they are confident in their recommendation.

[3:17:20] Chairman Chellman noted that his preference would be to see a quorum of the Board at a future meeting to go through final changes.

[3:19:38] Mr. Cracknell noted that he could send an updated presentation with the revised ordinance amendments by the end of the business day on the following Tuesday so that board members could have ample time to review.

[3:21:15] Mr. Harris made a motion to continue the Public Hearing until the meeting on February 23, 2023. The motion was seconded by Mr. Hewitt. The motion passed with a 7-2 with Councilor Moreau and City Manager Conard opposed.

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 **One Market Square LLC (Owner)**, for property located at **1 Congress Street** requesting Site Plan Review approval for the partial demolition and expansion of the existing structure to construct a 3-story mixed-use building with 58,780 square feet of gross floor area, 12,080 square foot building footprint, 13 parking spaces, and associated onsite and offsite improvements. Said property is shown on Assessor Map 117 Lot 14 and lies within the Character District 4 (CD4), Character District 5 (CD5), Downtown Overlay (DOD), and Historic District. (LU-22-12)

[10:25] City Manager Conard made a motion to take this application out of order and consider it before the Phase II Regulatory Amendments. Mr. Almeida seconded the motion. The motion passed unanimously.

SPEAKING TO THE APPLICATION

[11:26] John Chagnon of Ambit Engineering, Tracy Kozak (architect), Terrence Parker (landscape architect) and Mark McNabb (developer) came to present this application. Mr. Chagnon went on to give a brief background of the lot and how it was previously two lots that had since been merged (lots 14 and 15) and two different current zoning areas (CD4 and CD5). The proposal has previously come before the Planning Board and had already received approvals from the Historic District Commission and the Technical Advisory Committee. The current proposal before the Planning Board seeks approval for on-site improvements and facilities. The second phase of their public process will include seeking approvals for off-site improvements such as street improvements. Mr. Chagnon further explained the contents of the application along with the details included in the plan sets.

[18:13] Mr. Hewitt asked if any of the proposed off-site improvements were required for the current approval before them and wanted to understand if the applicant was donating these improvements or if they were required.

Mr. Chagnon noted that some utility improvements were required for approval but on-site improvements needed to be approved before off-site improvements could be applied for. Mr. McNabb noted that none of the improvements that would not be bettering City property were required for this project.

[23:25] Ms. Kozak with Arcove Architects presented on the features of the proposed mixed-use building for this application. Specifically, the architectural details, the apartment use, and underground parking.

[24:55] Mr. Parker of Terra Firma Landscape Architecture spoke on the proposed landscaping details. The majority of the landscaping will be part of the off-site improvements but for this

application there is a small strip on the north side of the site with proposed ornamental plants and porous pavement.

[26:12] Ms. Begala asked about the future plans for the existing tree on Congress Street in front of the building, which is proposed to stay. She was also curious about the parking allotment which calls for thirteen spaces yet the basement includes twenty three. This was a typo in the agenda where they are proposing twenty three spaces, not thirteen, where twenty two are needed. She was also curious if the facade facing Congress Street would stay the same. The brownstone facade will be restored with many similarities to its historic condition. The historic lettering will be preserved.

[32:50] Vice Chair Clark asked about traffic safety and concern for pedestrians. The garage entrance was made to be wider to allow for larger turning radiuses. There will be a dead end to the street (as it is currently) and will likely only see traffic from residents or people using those buildings. A question was asked about parking in the garage and how it was assigned. The spots will be stacked parking with two spaces assigned to each unit. A question was asked about fire and safety access in the alleyway. The alley does not need fire access because the buildings are fully sprinklered. Vice Chair Clark asked if they had considered any on-site detention of stormwater which Mr. Chagnon noted that they will be matching existing runoff in the future. A question was asked about whether or not this application meets the newest building height standards (which they did not need to meet) and it does with their hipped-top mansard roof style which is below the maximum.

[39:30] Chairman Chellman announced that Mr. Samonas had joined the Board and would be filling in for Planning Board Member Mahanna as a voting member.

PUBLIC HEARING

[42:19] Chairman Chellman opened the public hearing.

[42:34] Elizabeth Bratter of 159 McDonough Street came to speak. She noted that the applicants did a nice job of maintaining existing views and aesthetics for this project. She appreciated many features of the proposal and voiced her support for approving the application.

[44:40] Kevin Shultz of Port City Realty Group, also a manager for the abutting condos, brought up concerns for the pedestrian traffic on High and Ladd Street when there will be road closures. He noted that the condo association would like to be notified of when those events occur but overall they were glad to see this project and all it entails.

[47:38] Petra Huda of 280 South Street spoke to her confusion about the timing of all the previous approvals and why all the previous approvals were for a hotel and not the current mixed-use.

[50:00] Esther Kennedy of 41 Pickering Avenue noted that perhaps affordable housing could be included in this new proposal since it was no longer a hotel. She also was concerned about whether or not this proposal would need to be reviewed by the demolition committee.

[54:00] Mr. McNabb brought up the issue of license fees for public ways and noted that the Planning Board couldn't approve of those but could make a recommendation. Due to the developer not requesting a funding match from the City, they would prefer not to pay license fees for the street improvements in the future application for off-site improvements.

[55:52] Chairman Chellman closed the public hearing.

DISCUSSION AND DECISION OF THE BOARD

[56:00] Vice Chair Clark asked for clarification on Condition 2.2 and whether or not it would include a traffic and safety plan as well. This would include the site construction plan, pedestrian safety, abutters, etc.

A discussion commenced on the proposed off-site improvements and what the board could vote on and approve of. Councilor Moreau reminded the Board that the City Council set money aside to rethink Market Square in terms of vehicle and pedestrian traffic which could all be done at the same time in the future.

[1:02:06] Vice Chair Clark noted that Condition 2.5 required review and approval for street improvements and wondered whether or not that should be removed from this application since this is only for on-site changes. Mr. Almeida noted that it would make sense to pull that condition out and City Manager Conard requested that they just remove "prior to the issuance of a building permit" from the language and note that it must be reviewed and approved by City Council.

[1:06:23] Councilor Moreau made a motion to find that the Site Plan Application meets the requirements set forth in the Site Plan Regulations Section 2.9 Evaluation Criteria and adopt the findings of fact as presented. Mr. Almeida seconded the motion. The motion passed unanimously.

[1:07:35] Councilor Moreau made a motion to grant Site Plan Approval with the following conditions:

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) The applicant shall prepare a Construction Management and Mitigation Plan (CMMP) for review and approval by the City's Legal and Planning Departments.

2.3) The applicant shall agree to pay for the services of an oversight engineer, to be selected by the City, to monitor the construction of improvements within the public rights-of-way and on site.

2.4) 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. For more information visit: <https://www.cityofportsmouth.com/publicworks/stormwater/ptap>

2.5) The proposed off-site improvements for High Street and Ladd Street and Haven Court will be reviewed, approved and authorized by the City Council to ensure building, pedestrian, vehicular, and emergency vehicle safety.

2.6) Any utility work that is necessary to construct a fully operational building will need to be reviewed and approved by the Public Works Department.

Prior to the issuance of a Certificate of Occupancy or release of the bond:

2.7) The Engineer of Record shall submit a written report (with photographs and engineer stamp) certifying that the stormwater infrastructure was constructed to the approved plans and specifications and will meet the design performance.

2.8) Add signage at the end of Haven Court to indicate no outlet and local traffic only with the preferred sign location on the Hanover garage, subject to City Council approval.

The motion was seconded by Mr. Almeida. The motion passed unanimously.

V. CITY COUNCIL REFERRALS

A. See item III.B. (Old Business)

VI. OTHER BUSINESS

A. 238 Deer Street LLC (Owner), for property located at 238 Deer Street requesting a 1-year extension to the Planning Board Site Plan Approval granted on March 17, 2022, and to modify the conditions of approval in the Conditional Use Permit that the expiration can coincide with the extended term of the site plan approval. (LU-20-238)

[1:10:05] City Manager Conard made a motion to move item 6A up in the agenda. Vice Chair Clark seconded the motion. Mr. Samonas noted that he had to recuse himself from the application. The motion passed unanimously.

SPEAKING TO THE APPLICATION

[1:11:15] John Chagnon of Ambit Engineering and Sharon Summers, the counsel for the applicant, came to speak on the applicant's behalf. Mr. Chagnon explained that an extension was needed as their expiration date was nearing mid-March. They also need an extension of their conditional use permit with the site plan agreement, they requested that both be considered together moving forward. In September of 2021, the proposal was received by the Zoning Board of Adjustment and in November of 2021 the application also had to receive Historic District Commission approval. The Planning Board then approved the site plan in March of 2022. The

previous Planning Board conditions included providing temporary construction easement which had since been amended or eliminated by TAC staff in November of 2022. The second condition required that the project submit a CMMP plan which was submitted to the City but the review of this was held up and has not been completed. The third condition was that the site plan be recorded which is also being held up by all the other conditions. The fourth condition included the City being granted an easement for additional pedestrian walkways but there is an existing community space easement that will be expanded on and signed once the project is approved.

[1:17:14] The conditions for the conditional use permit includes the long-term leasing of seven parking spaces and the updating of the lease that was presented to the Board regarding how those spaces would be accounted for in regards to the micro-housing units.

[1:17:56] Ms. Summers reiterated the progress that had been made for this project since 2021 and specifically noted the progress on the conditions and easements that were needed. They would like to see that if the conditions of the site plan approval were met then the obligations of obtaining the lease would be tied to those approvals. They believe by tying those issues together they could avoid seeking a new conditional use permit. The client of Ms. Summers feels that construction costs are starting to stabilize and that by springtime they could begin to get things in motion and pull the building permit for this project.

[1:24:33] Councilor Moreau confirmed that the applicant was requesting that the conditional use permit will be completed prior to the certificate of occupancy. They do understand that and confirmed that all of the conditions would have to be in place prior to getting tenants and their CO.

[1:25:50] Ms. Begala expressed her confusion as to why the timing of the leases would have anything to do with the Board's granting of an extension. Ms. Summers noted that this was a term of the conditional use permit approval.

[1:33:00] Mr. Hewitt felt that the Board would not be able to grant a second one-year extension of the parking CUP. Ms. Summers clarified that they were not asking for a second extension but rather just for that specific condition of approval to be tied to the length of time when the site plan conditions needed to be wrapped up. Mr. Hewitt asked if there was any hardship in applying for a CUP to which Ms. Summers noted that there were two types; the hardship of the additional delay due to going through the planning process again and the uncertainty of being able to receive the same relief a second time. Chairman Chellman expressed his discontent with having to approve a second extension and had concerns about tying the condition with the parking in terms of the rules of the Zoning Ordinance.

[1:37:20] Chairman Chellman announced that the Board would take a five-minute break.

[1:44:50] Ms. Summers brought up the language of Section 10.246.10 of the Zoning Ordinance and noted that the applicant was asking for two specific requests of the Board. This included extending the site plan approval for a year and to modify the condition on the conditional use permit so that it could coincide with the term of the conditional use approval. If the board were to modify the conditions of approval they could then avoid the time constraint.

[1:47:39] Councilor Moreau made a note of how hard they worked on coming up with innovative parking ideas for this neighborhood and she mentioned that she would be willing to move forward with the proposed amendments of the applicant but it would all have to be completed before the issuance of a certificate of occupancy and the extension would be final for the conditional use permit. Mr. Almeida supported these potential modifications.

[1:51:05] Councilor Moreau made a motion to grant a one-year extension of the Planning Board approval of the site plan and amend the conditions of approval for the conditional use permit to be completed prior to the issuance of a certificate of occupancy and the extension would be final for the conditional use permit. Mr. Almeida seconded the motion.

[1:52:15] Both Mr. Hewitt, Ms. Begala and Chairman Chellman noted their opinion that this request would not comply with the language of the Zoning Ordinance.

[1:55:20] A roll call vote commenced with Ms. Begala, Mr. Harris, Mr. Harris and Chairman Chellman voting against the motion, resulting in a 4-4 tie vote. The motion failed.

[1:56:18] Councilor Moreau made a motion to grant a one-year extension to the Planning Board approval of the site plan. City Manager Conard seconded the motion. The motion passed unanimously.

A discussion commenced on the project and the application of the Zoning Ordinance language and its constraints.

[2:03:38] Vice Chair Clark made a motion to amend the conditions of approval for the conditional use permit as requested to be completed prior to the issuance of a certificate of occupancy and the extension would be final as of March 2024. Councilor Moreau seconded the motion. Ms. Begala, Mr. Harris, Mr. Hewitt and Chairman Chellman voted against the motion, resulting in a 4-4 tie vote. The motion failed.

PUBLIC HEARING

DISCUSSION AND DECISION OF THE BOARD

B. 325 Little Harbor Road – Updated Land Management Plan

[3:22:53] Mr. Stith noted that this item was for informational purposes and was added to the packet because it was a condition of approval to provide updates to the Board.

C. Chairman Updates and Discussion Items

[3:23:17] Chairman Chellman brought up the Master Plan and noted that he had been in discussions with the mayor about it and was excited to have the Board, high school students and the school superintendent working on it.

D. General Update of Planning Board Rules and Procedures

[3:24:05] Chairman Chellman noted that if there were any comments on the rules they could submit them to the Legal Department for review by the March meeting.

E. Board Discussion of Regulatory Amendments, Master Plan and Other Matters

VII. ADJOURNMENT

[3:25:06] Chairman Chellman adjourned the meeting at 10:25 p.m.

Respectfully submitted,

Kate Homet,
Acting Secretary for the Planning Board