

**PLANNING BOARD
PORTSMOUTH, NEW HAMPSHIRE**

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

7:00 PM

October 26, 2023

MINUTES

MEMBERS PRESENT: Rick Chellman, Chair; Corey Clark, Vice-Chair; Karen Conard, City Manager; Joseph Almeida, Facilities Manager; Members Peter Harris, Greg Mahanna; , James Hewitt; Alternates Andrew Samonas and William Bowen

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ALSO PRESENT: Peter Stith, Planning Manager

MEMBERS ABSENT: Beth Moreau, City Councilor; Jayne Begala

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Chair Chellman called the meeting to order at 7:00 p.m.

I. DETERMINATIONS OF COMPLETENESS

SUBDIVISION REVIEW

- A.** The request of **Bantry Bay Associates LLC (Owner)**, for property located at **0 Shearwater Drive** requesting Preliminary and Final Subdivision approval for the subdivision of the 2.23-acre lot into nine (9) conforming Single-Family lots. Said property is located on Assessor Map 217 Lot 2-1844 and lies within the General residence B (GRB) District.

SITE PLAN REVIEW

- A.** The request of **Bantry Bay Associates LLC (Owner)**, for property located at **0 Shearwater Drive** requesting Site Plan Review approval for the construction of nine (9) single-family dwellings with associated paving, stormwater management, lighting, utilities and landscaping. Said property is located on Assessor Map 217 Lot 2-1844 and lies within the General Residence B (GRB) District.

Vice-Chair Clark moved that the Board vote to determine that the above applications are complete according to the Subdivision Review Regulations (contingent on the granting of any required waivers under Sections III and/or IV of the agenda) and the Site Plan Review Regulations (contingent on the granting of any required waivers under Sections III and/or IV of the agenda) to accept the application for consideration.

Mr. Mahanna seconded the motion. The motion passed with all in favor.

II. PUBLIC HEARINGS -- NEW BUSINESS – (Reconvened from October 19, 2023)

- F.** The request of **Eric and Amanda Beidleman, (Owners)**, for property located at **810 McGee Drive** requesting a Wetland Conditional Use Permit from Section 10.1017 for the removal of an existing 508 s.f. rear deck within the 100-ft wetland buffer and the associated framing and stairs. The applicant is proposing to replace the rear deck with a smaller deck of approx. 319 s.f. with a 60 s.f. landing. Said property is located on Assessor Map 219 Lot 45-5 and lies within the Single Residence B (SRB) District. (LU-23-143)

SPEAKING TO THE APPLICATION

Owner Eric Beidleman and the deck contractor Lynette Rogers were present to speak to the petition. Ms. Rogers said the proposed deck would not take up any more of the area's square footage. She said logs for wetland conservation areas were placed on the trees, crushed stone was placed under the deck, and a silt fence was installed as additional protection for the wetland.

The Board had no questions, and Chair Chellman opened the public hearing.

PUBLIC HEARING

Speaking To, For, or Against the Petition

No one spoke, and Chair Chellman closed the public hearing.

DISCUSSION AND DECISION OF THE BOARD

Vice-Chair Clark moved that the Board find that the Conditional Use Permit application meets the criteria set forth in Section 10.1017.60 and to adopt the findings of fact as presented.

The motion was seconded by Mr. Almeida and passed with all in favor.

*Vice-Chair Clark moved that the Board grant the Wetland Conditional Use permit with the following **conditions**:*

- 2.1) Crushed stone be placed underneath the deck area to provide storm-water infiltration.*
- 2.2) Wetland boundary markers shall be placed along the fence towards the back of the property to designate sensitive wetland area.*

Mr. Almeida seconded the motion. The motion passed with all in favor.

Vice-Chair Clark said it was a straightforward application and that the deck was going from a bigger one to a smaller one, which made sense given the property's constraints.

Chair Chellman asked that the next two items for Bantry Bay Associates (Items G and H) be considered together and voted on separately. He read them into the record.

Ms. Conard moved that the Board consider the subdivision and site plan applications together and vote on them separately. Mr. Almeida seconded. The motion passed with all in favor.

- G.** The request of **Bantry Bay Associates LLC (Owner)**, for property located at **0 Shearwater Drive** requesting Site Plan Review approval for the construction of nine (9) single-family dwellings with associated paving, stormwater management, lighting, utilities and landscaping. Said property is located on Assessor Map 217 Lot 2-1844 and lies within the General Residence B (GRB) District. (LU-23-138)

SPEAKING TO THE APPLICATION

[Timestamp 10:27] Neil Hansen of Tighe and Bond was present on behalf of the applicant and reviewed the petition. He noted that the waiver from Section 9.2 requiring a maintenance bond for maintenance of roadways was requested because that section was not applicable to the project. He said the previous buildings on the land were demolished but the foundations, driveways, and parking areas were still there. He said the existing sidewalk would be reconstructed and would follow the same alignment and the site would be regraded to match existing grades. He said some existing drainage pipes along Shearwater Drive would be replaced as well as pipes that connect the lot to Market Street, and the existing berm would be maintained. He discussed drainage and utilities and said the applicant would replace the existing sewer main and clay pipe. He said a few mature trees would have to be removed and replaced but most of the landscaping would be a blank canvas for future owners.

Mr. Hewitt asked why the applicant was providing 36 parking spaces for nine units when the City's parking rules required 12 spaces. Mr. Hansen said the calculations were for a two-car garage and the driveway could fit two cars, so four cars would fit on a lot. Mr. Hewitt said parking was a driver of making homes expensive and that some people would think that complying with what the applicant was providing would make the units incredibly expensive. Mr. Hansen said adding excess parking added costs to a multi-family development project, but their development was for single-family homes and the parking count was based on a driveway that needed to be built anyway and there was a two-car garage per unit. Mr. Almeida asked if there would be significant site lighting or sidewalk lighting. Mr. Hansen said they were not proposing any new street lighting and there would be nothing more than a lamppost near the house or a wall sconce near the front door.

Mr. Harris asked about trees that needed to be removed. Mr. Hansen said there was a single row of trees along the street and that the trees to be removed were on the right side where an existing parking area was, so the driveways didn't line up where they needed the new ones. Mr. Harris asked if there were concerns about noise from the roadway. Mr. Hansen said that was the reason they didn't want to cut into the berm. He also noted that there was a 5-ft hill with tall trees and

thick vegetation on one side of the proposed houses. He said he lived along the road and that the traffic wasn't loud 95 percent of the time. Vice-Chair Clark asked if TAC raised concerns about having the sump pumps of each residence tie into the proposed draining system. Mr. Hansen said they did not. Mr. Samonas said there was recently a development built off Cutt Street with four homes on a small cul-de-sac that abutted Market Street and that the applicant put a fence up, and he thought there was some public access that could have changed that consideration. He asked if the applicant had considered a fence in addition to tree planting. Mr. Hansen said he wasn't aware of any consideration for a fence, noting that there was already a substantial berm. He said a homeowner could put up a fence behind their section of the property, however.

At this point in the meeting, Chair Chellman noted that Alternates Mr. Samonas and Mr. Bowen were sitting in for Ms. Begala and Councilor Moreau, who were absent. He asked for a motion.

Vice-Chair Clark moved to reaffirm what the Board had done so far, seconded by Mr. Almeida. The motion passed unanimously.

Chair Chellman opened the public hearing.

PUBLIC HEARING

Speaking To, For, or Against the Petition

No one spoke, and Chair Chellman closed the public hearing.

DISCUSSION AND DECISION OF THE BOARD

Vice-Chair Clark moved that the Board 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. Mahanna seconded. The motion passed with all in favor.

Vice-Chair Clark said the project appeared to be straightforward and was unique because of what used to exist compared to what was proposed but was similar in a lot of ways. He said it seemed to fit very well within the neighborhood's context.

*Vice-Chair Clark moved that the Board grant Site Plan Approval with the following **conditions**:*

Conditions to be satisfied subsequent to final approval of site plan but prior to the issuance of a building permit or the 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) *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.*
- 2.3) *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>

- 2.4) DPW will review and approve the locations of domestic and fire service lines entering all buildings.*
- 2.5) Applicant will contribute a fair share payment of \$25,000 for offsite improvements including a sidewalk to Granite Street crossing Market Street and installing pedestrian signals as part of crosswalk.*

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

- 2.6) 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.*

Mr. Mahanna seconded the motion. The motion passed with all in favor.

H. The request of **Bantry Bay Associates LLC (Owner)**, for property located at **0 Shearwater Drive** requesting Preliminary and Final Subdivision approval for the subdivision of the 2.23-acre lot into nine (9) conforming Single-Family lots. Said property is located on Assessor Map 217 Lot 2-1844 and lies within the General residence B (GRB) District. (LU-23-138)

Vice-Chair Clark moved that the Board grant the requested waivers to the Subdivision Standards from Section IX.2, Maintenance Bonds because strict conformity would pose an unnecessary hardship to the applicant and waiver would not be contrary to the spirit and intent of the regulations. Mr. Mahanna seconded. The motion passed with all in favor.

Vice-Chair Clark moved that the Board find that the Subdivision (Lot Line Revision) application meets the standards and requirements set forth in the Subdivision Rules and Regulations to adopt the findings of fact as presented. Mr. Almeida seconded. The motion passed with all in favor.

*Vice-Chair Clark moved that the Board grant Preliminary and Final Subdivision Approval with the following **conditions**:*

- 2.1) The subdivision plan, and any easement plans and deeds shall be recorded simultaneously at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.*

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

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

Mr. Almeida seconded. The motion passed with all in favor.

- I.** The request of **Richard P. Fusegni (Owner)**, for property located at **201 Kearsarge Way** requesting Amended Subdivision approval for revisions to the grading and drainage design. Said property is located on Assessor Map 218 Lot 5 and lies within the Single Residence B (SRB) District. (LU-23-161)

SPEAKING TO THE APPLICATION

[Timestamp 26:45] Project engineer Joe Coronati was present on behalf of the applicant, along with his clients Jen and Michael Green of Green & Company Real Estate who had the property under agreement. He said the project was approved in 2020 and 2022, when there was a large retaining wall on the back of the house. He said that, prior to that wall, there were underground StormTech drainage systems for roof water but that they were uncommon in residential developments that owners had to maintain, so Green & Company asked him to simplify the drainage. He said there were no changes to the lot lines that were granted, but the retaining wall was eliminated and a rain garden was added between the two properties. He said test pits were also dug on the property to verify that the soils were decent.

Vice-Chair Clark said the applicant had said that maintenance had to occur and the rain garden was split between two properties, yet the Board was being asked to remove the condition for having a maintenance agreement between the two properties. Mr. Coronati said there was still a requirement for maintenance between the properties but it would be less involved. He said a rain garden had minor maintenance and was simpler to repair than a retaining wall going across lot lines. Vice-Chair Clark said he wanted to ensure that the Board would not get rid of the maintenance document that would be required. Mr. Coronati said a revised maintenance document was submitted. Chair Chellman said there were three maintenance notes on the plan under maintenance requirements. Vice-Chair Clark said he didn't know if the best way to do it was to replace the StormTech with a rain garden because it would still run with the deed.

Chair Chellman asked if the rain garden would be the responsibility of all three homeowners or just the two lots that it was on. Mr. Coronati said it would be the two lots and would be an agreement between the two property owners, minus the StormTech and adding the rain garden. Vice-Chair Clark thought it would work but said the Board would have to rearrange the conditions side of things. Mr. Mahanna asked if the conservation easement would also reflect whether the two individuals involved were jointly committed to maintaining it financially. Chair Chellman said cross easements would be needed. Mr. Mahanna said an HOA (Home Owners Association) required HOA documents, which the Board didn't have. Mr. Coronati said the conservation area would include the maintenance of the drainage and it would all be one document. Vice-Chair Clark asked if the conservation area easement already occurred and was

currently running with the land. Mr. Coronati said the plans had been approved but not recorded and that they could add things like easements or notes. Chair Chellman asked if the former retaining wall was ghosted behind the two buildings. Mr. Coronati agreed and said none of the proposed buildings were in the conservation area and that the line with the structures was maintained so that the area would still be vegetated. Vice-Chair Clark said keeping Condition 1-1 from the 2022 conditions might satisfy the situation. As to drainage requirements, he said the condition stated that the rain garden shall be included in the easement language or otherwise addressed through a maintenance agreement. He said taking both conditions and possibly Condition 2.5-1 might work. Chair Chellman said Lot 1 was involved because its water went through the rain garden. Mr. Coronati said it didn't because it drained to the rear and behind the rain garden. He said the ditch along the property line could be included. It was further discussed.

Chair Chellman asked, regarding future possible improvements on the lot, if Mr. Coronati sized the rain garden based on the footprints shown. Mr. Coronati said they increased the footprints and sized the rain garden based on them. Chair Chellman asked if future improvements, like an additional detached garage or an ADU, would be allowed with the drainage design. Mr. Coronati said it would have to be revisited but there wasn't a lot of room for some of those structures, although the conservation area did allow for a shed. Chair Chellman said the prior subdivision plan hadn't been recorded and asked if Mr. Coronati was comfortable putting notes on it for a new subdivision plan to be recorded reflecting the drainage easement. Mr. Coronati said they would have to pull together their plans at some point and make a set for the City to sign and keep on record between the two engineering firms. He said it would end up being on Ambit Engineering's plan for the easements because they did all the survey work and the lot layouts, and his plans might be assimilated into the set for the stormwater portion. Chair Chellman said the Board should know if the proposal was for Mr. Coronati to finish the drainage and for Ambit to do a revised subdivision plan reflecting the notes. Mr. Coronati said he thought a two-prong approach was simplest, where both engineering firms would be involved in the final plans, and if that changed they would still produce final plans identical to what was previously approved. Chair Chellman said the Board would consider the revised grading and drainage plan and a revised subdivision plan, with an approval condition of seeing that revised subdivision plan.

Chair Chellman opened the public hearing.

PUBLIC HEARING

Speaking To, For, or Against the Petition

No one spoke, and Chair Chellman closed the public hearing.

DISCUSSION AND DECISION OF THE BOARD

Vice-Chair Clark said the Board could go back to the way the prior conditions outlined that the drainage easements shall be provided across the various lots and maintenance agreements need to be part of that language and documented, or they could go with the applicant doing an amended subdivision approval and returning to the Board with the easements as shown. Mr. Mahanna said he liked the first option. Vice-Chair Clark said he was comfortable with that

because it was what the Board approved before, but this time it was inside the conservation easement, where everything before was outside of it. He said it was a conservation easement, however, which was different than other items like wetland buffers. Chair Chellman said the Board didn't ask if it was allowed in the conservation easement, but Mr. Stith said it was and that he provided information on it.

Vice-Chair Clark moved that the Board grant Amended Subdivision Approval with the following conditions:

2.1) Removal of prior conditions 2.5.1, 2.5.1-a, 2.5.1-b and 2.5.1-c from the October 27, 2022 letter of decision and removal of prior condition 1 and 1-1 from the March 2, 2020 letter of decision. All other prior conditions of approval are still required.

2.2) The drainage easements shall be provided across lot 3 for lot 2 and 1 drainage, and across lot 2 for lot 1 drainage. Maintenance responsibilities by the homeowners for the rain garden and overflow control structures shall be included in the easement language and addressed through a maintenance agreement. That document shall be recorded as part of the conservation easement deed.

Ms. Conard seconded. The motion passed with all in favor.

J. The request of **Daniel Sigalovsky and Sarah Cook (Owners)**, for property located at **390 F.W. Hartford Drive** requesting a Wetland Conditional Use Permit from Section 10.1017 for the removal of an existing 16' x 24' rear deck within the 100-ft wetland buffer and the replacement of the deck with a 14' x 16' permeable paver patio. The project will include enhanced stormwater management including a gravel infiltration area, installation of a rain garden, native plantings, and the installation of a permeable patio in place of the existing deck. Said property is located on Assessor Map 249 Lot 25 and lies within the Single Residence B (SRB) District. (LU-23-140)

SPEAKING TO THE APPLICATION

[Timestamp 49:04] The owner Sarah Cook was present and said she wanted to remove the existing deck and replace it with a patio.

The Board had no questions. Chair Chellman opened the public hearing.

PUBLIC HEARING

Speaking To, For, or Against the Petition

No one spoke, and Chair Chellman closed the public hearing.

DISCUSSION AND DECISION OF THE BOARD

Vice-Chair Clark moved that the Board find that the Conditional Use Permit application meets the criteria set forth in Section 10.1017.60 and to adopt the findings of fact as presented.

Mr. Almeida seconded. The motion passed with all in favor.

*Vice-Chair Clark moved that the Board grant the Wetland Conditional Use permit with the following **condition**:*

- 2.1) In accordance with Section 10.1018.40 of the Zoning Ordinance, applicant shall install permanent wetland boundary markers during project construction. These can be purchased through the City of Portsmouth Planning and Sustainability Department.*

Mr. Almeida seconded. The motion passed with all in favor.

III. OTHER BUSINESS

A. Chair Updates and Discussion Items

Chair Chellman said there was a first subcommittee meeting held on the Master Plan and there would probably be another one next week. He said they were working on the RFP/RFQ and might have a draft on the scope of work and then would discuss whether it would go to a select group of consultants or not. He said he hadn't heard back from the school superintendent but did talk to an organization called NH Civics from Concord who dealt with engaging students in civic actions and that they were excited about the idea.

B. Planning Board Rules and Procedures

Chair Chellman said nothing was updated since the previous week, but he referred to the issue of whether non-sitting alternates could participate in discussions after a motion was seconded. He said there was a Statute on it and that the draft would address it at the next meeting. He said he would propose that the alternates be allowed to participate. It was further discussed.

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

The Board discussed moving a heavy December agenda into the November or January meetings.

IV. ADJOURNMENT

The meeting adjourned at 8:00 p.m.

Respectfully submitted,

Joann Breault
Secretary for the Planning Board