

**PLANNING BOARD
PORTSMOUTH, NEW HAMPSHIRE**

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

7:00 PM Public Hearings begin

June 20, 2024

MEMBERS PRESENT: Rick Chellman, Chairman; Greg Mahanna, Vice Chair; Karen Conard, City Manager; Joseph Almeida, Facilities Manager; Beth Moreau, City Councilor; James Hewitt; Paul Giuliano; Andrew Samonas; Anthony Coviello; and William Bowen, Alternate

.....

ALSO PRESENT: Peter Stith, Planning Department Manager

MEMBERS ABSENT: None.

.....

Chair Chellman called the meeting to order at 7:00 p.m. He stated that Mr. Coviello would arrive at the meeting later and that Alternate Mr. Bowen would take a voting seat until then.

I. APPROVAL OF MINUTES

A. Approval of the May 16, 2024 meeting minutes.

*Vice-Chair Mahanna moved to **approve** the May 16 minutes as **amended**, seconded by Councilor Moreau and with Mr. Hewitt abstaining. The motion passed unanimously.*

II. DETERMINATIONS OF COMPLETENESS

SITE PLAN REVIEW

A. The request of **Friends of Lafayette House in care of Melanie Merz (Owner)**, for property located at **413 Lafayette Road** requesting Site Plan Review Approval to construct an attached caretaker's unit to the existing residential care facility with associated site improvements. Said property is located on Assessor Map 230 Lot 23A and lies within the Single Residence B (SRB) District.

*Councilor Moreau moved that the Board determine that Item A 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. Vice-Chair Mahanna seconded. The motion **passed** unanimously.*

III. PUBLIC HEARINGS – NEW BUSINESS

- A. The request of **Edmund R. St. Pierre (Owner)**, for property located at **15 Mariette Drive** requesting a Conditional Use Permit from Section 10.814 for a Detached Accessory Dwelling Unit. Said property is located on Assessor Map 292 Lot 167 and lies within the Single Residence B (SRB) District. (LU-24-57)

SPEAKING TO THE PETITION

[Timestamp 4:30] The applicant Edmund St. Pierre was present. He reviewed the petition and described what the proposed detached Accessory Dwelling Unit (ADU) would look like.

[Timestamp 7:58] Vice-Chair Mahanna noted that the applicant said he wanted to downsize and asked if the applicant would live in it. Mr. St. Pierre said he designed the ADU for himself or his sister to live in. Councilor Moreau said the applicant said a second-floor full bathroom was proposed but that he mentioned a half bath on the first floor. Mr. St. Pierre said the first-floor full bathroom would go away with the renovation. Chair Chellman said the applicant proposed to renovate part of the first floor into the ADU but that one of the plans showed the entire first floor going into the ADU. Mr. St. Pierre said he originally designed a handicap accessible first floor but did not follow through with it because of the square footage.

Chair Chellman opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

*Councilor Moreau moved that the Board find that the Conditional Use Permit Application meets the requirements set forth in Section 10.814.62 of the Ordinance and adopt the findings of fact as presented. Ms. Conard seconded. The motion **passed** unanimously.*

Councilor Moreau moved that the Board grant the Conditional Use Permit with the following conditions:

2.1) Documentation of the conditional use permit approval shall be recorded at the Rockingham County Registry of Deeds, together with an affidavit that either the principal dwelling unit or the accessory dwelling unit will be occupied by the owner of the dwelling as the owner's principal place of residence, as required by Section 10.814.22.

2.2) A certificate of use issued by the Planning Department is required to verify compliance with the standards of this Section, including the owner occupancy and principal residency requirements. Said certificate shall be issued by the Planning Department upon issuance of a certificate of occupancy by the Inspection Department. A certificate of use shall not be issued prior to recording of documentation as required by this Ordinance.

2.3) *The certificate of use shall be renewed annually upon submission of such documentation as the Planning Department may require to verify continued compliance with the standards of this Section. Failure to comply with this requirement shall be deemed a violation of the ordinance and may be enforced as provided in Article 2.*

*Ms. Conard seconded. The motion **passed** unanimously.*

- B.** The request of **Richard M. and Francoise S. Kinney (Owners)**, for property located at **89 Cliff Road** requesting an after the fact Wetland Conditional Use Permit from Section 10.1017.50 for violations within the City's 100' wetland buffer. A three-season porch, deck and concrete landing pad were constructed without permits, of which 225 s.f. is within the buffer. Said property is located on Assessor Map 223 Lot 9 and lies within the Single Residence B (SRB) District. (LU-24-54)

SPEAKING TO THE PETITION

[Timestamp 13:00] The applicant Richard Kinney was present to review the petition. He said a 3-season porch, adjoining deck, and concrete landing pad were added that intruded 225 square feet into the wetland buffer. He said he worked with the Conservation Commission to mitigate the impact onto the buffer, which included putting in a drywell, adding gravel under the porch and deck, extending the downspout out from the north side of the house, and adding shrubs and a recessed planting area. He said a microclover lawn mix would replace the back yard's grass.

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

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

*Mr. Giuliano moved that the Board find that the Conditional Use Permit Application meets the requirements set forth in Section 10.1017.50 of the Ordinance and adopt the findings of fact as presented. Mr. Almeida seconded. The motion **passed** unanimously.*

Mr. Giuliano moved that the Board grant the 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 where applicable. In addition to the wetland boundary markers, an educational sign describing the project shall be installed near the restoration area and fencing should be utilized to keep disturbances such as dogs and geese from the area.

*Ms. Conard seconded. The motion **passed** unanimously.*

- C. The request of **Wentworth Senior Living (Applicant)**, and **MH Wentworth HM** for **CHRNC INV (Owner)**, for property located at **346 Pleasant Street** is requesting a Wetland Conditional Use Permit from Section 10.1017.50 to replace an existing wooden fence along the back of the property which abuts the South Mill Pond. This replacement project will have approximately 200 s.f. of impact within the buffer, with 10 s.f. of permanent impact below ground with the posts and 500 linear feet of permanent impact from the fence. Said property is located on Assessor Map 109 Lot 10 and lies within the General Residence B (GRB) District. (LU-24-63)

SPEAKING TO THE PETITION

[Timestamp 19:12] Madison Abbott representing Wentworth Senior Living was present to review the petition. She said they wanted to replace 510 linear feet of wooden fence, most of which occurred within the 100-ft wetland buffer. She said the reason for going through the whole permit requirement and not just an exception was because they had about 50 linear feet within the 25-ft vegetation buffer. She said they were past the point of repairing and explained how the installation method would be the least disruptive as possible.

[Timestamp 20:11] Councilor Moreau said it wasn't clear which fence would be installed. Ms. Abbott said they currently had a scalloped picketed fence that they wanted to replace with a vinyl one that would have the same look but be more durable. Chair Chellman asked if it was shiny. Ms. Abbott said it would be for a few years. She said one of the Conservation Commission's stipulations was that a regular maintenance plan be followed and that only pressurized washing with water be done. Vice-Chair Mahanna said it was an interesting choice by the applicant to oppose what the Historic District Commission (HDC) suggested. Ms. Abbott said the HDC approved the vinyl material but that the Conservation Commission suggested that other options be explored. She said an Azek material would have been a choice but it was four times the cost of the vinyl fence. Vice-Chair Mahanna said he would have preferred a non-shiny wooden fence, especially since Wentworth Senior Living was a public place. Ms. Abbott said they had about 90 feet of frontage on Pleasant Street, with a concrete wall that included a wooden fence above it. She said eventually they would replace the fence with another wood one. Mr. Almeida noted that the front of the building was painstakingly restored and maintained and there was a total rebuild of the fence in the front. Chair Chellman asked Ms. Abbott if she would accept a condition that the fence along Pleasant Street would remain wood. Ms. Abbott agreed.

Chair Chellman opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

*Councilor Moreau moved that the Board find that the Conditional Use Permit Application meets the requirements set forth in Section 10.1017.50 of the Ordinance and adopt the findings of fact as presented. Ms. Almeida seconded. The motion **passed** unanimously.*

Councilor Moreau moved that the Board grant the Conditional Use Permit with the following conditions:

2.1) In accordance with Section 10.1018.40 of the Zoning Ordinance, applicant shall install permanent wetland boundary markers where applicable. In addition to the wetland boundary markers, an educational sign describing the project shall be installed near the restoration area and fencing should be utilized to keep disturbances such as dogs and geese from the area.

2.2) Maintenance for the new fencing shall include power washing with water only.

2.3) Fencing along Pleasant Street if replaced, will remain the current material that exists.

*Mr. Almeida seconded. The motion **passed** unanimously.*

- D.** The request of **Friends of Lafayette House in care of Melanie Merz (Owner)**, for property located at **413 Lafayette Road** requesting Site Plan Review Approval to construct an attached caretaker's unit to the existing residential care facility with associated site improvements. Said property is located on Assessor Map 230 Lot 23A and lies within the Single Residence B (SRB) District. (LU-23-208)

SPEAKING TO THE PETITION

[Timestamp 27:55] Project engineer Joe Coronati was present to review the petition on behalf of the applicant, along with Friends of Lafayette House Executive Director Renee Sullivan and board member Melanie Merz. Mr. Coronati said the Friends of Lafayette House took care of twelve developmentally disabled adults. He said the full-time caretaker lived on the property and worked five days a week and a part-time caretaker worked on the weekend and stayed with the full-time caretaker then. He said the expansion was needed to add a one-story addition to the building so that the full-time caretaker had his own apartment. He said there would be no change to the number of residents or anything external except to modify the walkway.

[Timestamp 30:42] Councilor Moreau asked how people went in and out of the building. Mr. Coronati showed where the main entrance was and said it would not change. Chair Chellman said the site plan showed two accesses and asked if the one farther away was the main entrance. Mr. Coronati said the addition would be on the end of the building that had the boiler and storage rooms and would not alter any of the doorways or access points into the building. He said there would be a new entrance to the caretaker's unit. Councilor Moreau said the entrance on the right looked like it went into a kitchen. Mr. Coronati said there was an entrance on the long wall and egress doors that were fenced in and secured for residents. Mr. Bowen said there was plenty of parking at random times and that he assumed that most of the residents didn't drive but would have visitors. He asked if the parking would change and Mr. Coronati said it would not. Mr. Giuliano said the waiver request, Article 10, Outdoor Lighting, indicated that the applicant was

proposing additional lighting, and he asked if the applicant meant to say that they were not proposing additional lighting. Mr. Coronati agreed. He said there might be one residential light over entrance door that would be controlled by the caretakers and that there was one outside light that wasn't in the best of shape that may end up being removed.

Chair Chellman opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

*Mr. Giuliano 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. Vice-Chair Mahanna seconded. The motion **passed** unanimously.*

Mr. Giuliano moved that the Board find that the requested waivers will not have the effect of nullifying the spirit and intent of the City's Master Plan or the Site Plan Review Regulations, and to waive the regulations as requested. Councilor Moreau seconded.

Councilor Moreau said it was a little addition that would not really change the function or how the place works, so she agreed that the waivers were acceptable.

Mr. Giuliano 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:

3.1) 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.

*Ms. Conard seconded. The motion **passed** unanimously.*

E. 806 US Route 1 Bypass requesting Amended Site Plan Approval and a second 1-Year extension to the Site Plan Approval originally granted on June 23, 2022. (LU-22-81)

SPEAKING TO THE PETITION

[Timestamp 38:23] Project engineer Alex Ross was present on behalf of the applicant, with builder Dave Grzybowski. Mr. Ross said they were before the Board a month ago for the abutting site because of the off-site draining. He said it was the same as the present site, and he reviewed the existing conditions plan and the drainage. He said there were several design options reviewed by the City and the NHDOT and that A22 was approved, so now they had the proposed changes before the Board to get the amended plan set and extension approved.

[Timestamp 40:13] Mr. Giuliano said he had asked at the previous meeting what the property's use would be. Mr. Ross said property was currently City Tobacco and it was just a small building, so the owner wanted to move next door. He said the small building could be rented out or used for something else. Mr. Grzybowski said that after the move, the place would be empty but the applicant would come back before the Board for any change in use or if any business went in. Chair Chellman noted that an approved walk-in cooler would be added to the back of it to make the approved square footage.

Chair Chellman opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

*Councilor Moreau 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. Ms. Conard seconded. The motion **passed** unanimously.*

Councilor Moreau moved that the Board grant amended site plan approval and a second one-year extension with the original conditions as approved on June 23, 2022 and the following conditions:

Conditions to be satisfied subsequent to final approval of site plan but prior to the issuance of a certificate of occupancy and release of the surety:

2.1) 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;

2.2) A stormwater inspection and maintenance report shall be completed annually and copies shall be submitted for review to the City's Stormwater Division/ Public Works Department.

*Ms. Conard seconded. The motion **passed** unanimously.*

- F.** The Planning Board will hold a public hearing on the following amendments to Chapter 10, Article 5A - Character-Based Zoning, Section 10.5A43.33 regarding Building and Story Heights of the ZONING ORDINANCE of the City of Portsmouth, pursuant to Section 10.150 of the Zoning Ordinance.

[Timestamp 44:10] Chair Chellman asked if the Board members had a chance to look at the amendments. Mr. Hewitt said he didn't have time and preferred postponing it to give the Board members more time to look at the amendments carefully. Chair Chellman said it was a modification to something that was done last August, so it wasn't brand new. He said there was a question about whether there was a requirement to have workforce housing as part of the

proponent's application to qualify for the additional height story of building. He said it was corrected and that he requested that the Board members look at the other sections because the community space definitions were not what they would think. He said it included things like plazas and pedestrian passageways and was much more than greenspace. Vice-Chair Mahanna said he didn't get a chance to read the email. Councilor Moreau said the question was whether it needed to be mixed use residential and nonresidential uses for the incentives to be taken advantage of. She said that was why the City Council was trying to clarify that section because it was not as clear as what the intention was.

Chair Chellman said the original text included the phrase 'and/or' and that it could be confusing. He said it was meant to be a possible mix of building types. He said he also thought the 50 percent requirement for community space was high and a big ask as well as a detriment to the incentive itself. He said the Board might want to discuss whether they would want to suggest to the Council to reduce it. Vice-Chair Mahanna said it could be scaled down. Chair Chellman said he was thinking of scaling it down to half. Mr. Bowen asked if it would apply to the Steam Factory, and Chair Chellman said it would not because the Incentive Overlay District did not apply. He said there would have to be a one-acre minimum as well. He noted that the McIntyre and Citizens Bank properties would qualify as well as a few other properties. Vice-Chair Mahanna suggested that the Board receive more information to inform them on what they were deciding on for the next time they considered it. Councilor Moreau said there was a lot of discussion about the 50 percent community space at the Land Use Committee meeting, and due to the density and size of the one acre or more lots, trying to get as much community space as possible was very important, so she would not be in favor of trying to change that at this time. Chair Chellman said the building types included houses, and there had been discussion that The Hill, for example, was a nonconforming situation that could not be built downtown under the existing zoning but that it could be theoretically built on the Citizens Bank property with houses, so it would qualify for that type of development on that site. He said he thought it would be more difficult to do with a 50 percent community space allocation. Ms. Conard asked if the City Council could act in the absence of the Planning Board acting. Chair Chellman said the zoning ordinance required the Planning Board to make a recommendation to the City Council. He said he would be okay with revisiting the community space issue in the future. He said the other sections were strategically more important, especially the goal for workforce housing.

Ms. Conard moved to recommend that the City Council take up the new section as amended as of that day to the Planning Board. Mr. Giuliano seconded.

[Timestamp 53:47] There was further discussion about whether the Board would have the authority to grant an extra layer of height or extra floor in exchange for 5 or 10 percent being controlled rent price and 50 percent being greenspace. Chair Chellman said it was community space, not greenspace, and said examples would include pedestrian passageways, wide pedestrian sidewalks, pedestrian arcades, pocket parks, playgrounds, public observation decks, and that there was a requirement to include a plaza or square of at least 5,000 sf per acre. Chair Chellman said none of those were greenspaces and were hardscaped community spaces. Mr. Bowen asked if there was no discretion on a proposal that would conform to those conditions. Chair Chellman said it would be a Conditional Use Permit, so there was discretion involved and

some back-and-forth. He said if an applicant met all the requirements, the Board was supposed to grant it. Mr. Bowen said the average person thought of community space as greenspace. Vice-Chair Mahanna said he supported the clarification but thought the Board should see the normal overlay that showed the properties to be affected. Chair Chellman said none of the applicable properties were changing in any way and that very few could qualify. Vice-Chair Mahanna said it was a burden for the developer to have 50 percent of an acre for community space. Mr. Almeida agreed and said he thought part of the purpose of the amendment was due to workforce housing and thought it would encourage and discourage workforce housing at the same time. Chair Chellman said the motion was to correct the mistake. He said he was inclined to vote it up but that the Board could come back to it because workforce housing was a big topic.

*Ms. Conard **amended** her motion as follows:*

Ms. Conard moved that the Board vote to recommend to City Council to approve the zoning amendments as amended and to hold first reading and to convey the discussion the Board had about the 50% community space requirement. Mr. Giuliano seconded.

[Timestamp 1:01:22] There was further discussion. Mr. Samonas said one of the ways to achieve better public and community space results were amenities that welcomed the public, as opposed to wider pedestrian sidewalks. He said the second community space objective was to break up the massing of some of the larger north end projects that tried to utilize the parcel and drive economic return but created congestion. He said the workforce housing objective set the threshold so high that the developer had to come before the Board to ask if they would end up at 50 percent, but at least it allowed them to discuss it before the Board. He noted that the amendment mentioned the term ‘as further described’. He said the revisions helped the Board get a cohesive view of all the considerations, and if they had the figures and entire zoning ordinance in front of them, it helped to get the full big picture. Chair Chellman said it was not a change in any of that, however. He said if a second version of it happened, the first sentence about community space could be changed to say that “at least a smaller amount and up to 50 percent or whatever the range would be” to have a provision where the applicant is required to show both and have a discussion with the Board. It was further discussed. Mr. Hewitt said it may be a logical step but that he had to vote in opposition due to the nine hours’ notice. Mr. Giuliano said Mr. Samonas brought up a good points about the large projects in the north end, and it was further discussed. Mr. Almeida said he would support the motion because the Board was correcting minor language changes, but in the future they would need more discussion. Councilor Moreau said she could bring up the 50 percent issue at the City Council meeting.

*The motion **passed** 7-2, with Member Hewitt and Vice-Chair Mahanna voting against.*

Note: At this point in the meeting, Mr. Coviello arrived and took his voting seat, and Mr. Bowen went back to alternate status.

IV. CITY COUNCIL REFERRALS

A. Chapter 10, Article 5A - Character-Based Zoning (See item F. above)

See Item F above.

V. OTHER BUSINESS

- A. 325 Little Harbor Road** requesting a 1-Year Extension to the Wetland Conditional Use Permit originally granted on July 20, 2023. (LU-23-81)

DECISION OF THE BOARD

Councilor Moreau moved that the Board grant a one-year extension to the Planning Board Approval of the Conditional Use Permit to July 20, 2025. Mr. Almeida seconded. The motion passed unanimously.

B. Chairman Updates and Discussion Items

[Timestamp 1:14:00] Chair Chellman said there was a desire to go through the Board's site plan and subdivision regulations that had not had attention for some time, and the Legal Department wanted to have a meeting with a Planning Board subcommittee. Mr. Coviello and Mr. Bowen volunteered. Chair Chellman said he would set it up.

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

[Timestamp 1:14:51] Chair Chellman said a draft of the Master Plan Scope would go out to the Board members for a proposed RFQ similar to what the City did with the Sherburne school.

Mr. Coviello said he and Mr. Bowen were at a housing conference where Assistant Mayor Joanna Kelley spoke and said that the City Council collected data on new housing and the number of students that came out of that new housing. He asked if that data was available to the Board. Councilor Moreau said it was the Parson Woods in the west end and that two students were designated for Little Harbour School. Mr. Coviello asked if it were possible to have data on calls for service from Police and Fire, and Ms. Conard said she would find out.

VI. ADJOURNMENT

The meeting adjourned at 8:20 p.m.

Respectfully submitted,

Joann Breault
Planning Board Recording Secretary