

**PLANNING BOARD
PORTSMOUTH, NEW HAMPSHIRE**

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

7:00 PM Public Hearings begin

November 21, 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; Anthony Coviello; William Bowen, Alternate

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ALSO PRESENT: Peter Stith, Planning Department Manager

MEMBERS EXCUSED: Andrew Samonas

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Chair Chellman called the meeting to order at 7:00 p.m. Mr. Samonas was excused for the evening, and Alternate William Bowen took a voting seat.

Note: The Board first discussed Section V, Item A, City Council Referrals, Recommendation on FY2026-FY2031 Capital Improvement Plan, and then Item C, 27 Hancock Street.

I. APPROVAL OF MINUTES

- A. Approval of the September 26, 2024 Work Session minutes.
- B. Approval of the October 17, 2024 meeting minutes.
- C. Approval of the October 24, 2024 Work Session minutes.

*Ms. Conard moved to **approve** all three sets of minutes as presented, seconded by Mr. Almeida. The motion **passed** with all in favor.*

II. DETERMINATIONS OF COMPLETENESS

SUBDIVISION REVIEW

- A. The request of **Lawrence P. Bornheimer Revocable Trust and Roman Catholic Bishop of Manchester (Owners)**, for property located at **119 Diamond Drive** and **827 Woodbury Ave** requesting Preliminary and Final Subdivision approval for a Lot Line Revision between Map 220 Lot 31 and Map 219 Lot 39 to relocate the common boundary line to encompass existing encroachments including a fence, retaining wall and drainage features.

- B.** The request of **Northeast Credit Union (Owner)**, and **Liberty Mutual Insurance Company (Owner)**, for property located at **100 Borthwick Avenue** and **0 Borthwick Avenue requesting** Preliminary and Final Subdivision approval to adjust the boundary between Map 240 Lot 3 and Map 259 Lot 15 by adding approximately 4.88 acres to Map 240 Lot 3.

*Councilor Moreau moved that the Board determine that Items A & B are complete according to the Subdivision Review Regulations (contingent on the granting of any required waivers under Section IV of the agenda) and to accept the applications for consideration. Mr. Coviello seconded. The motion **passed** with all in favor.*

III. PUBLIC HEARINGS -- OLD BUSINESS

- A. POSTPONED TO JANUARY 2025.** The request of **Matt Ball** and **Andrea Fershtam (Owners)**, for property located at **252 Wibird Street** requesting a Conditional Use Permit from Section 10.814 for the conversion of an existing accessory structure into a Detached Accessory Dwelling Unit (DADU) that does not conform with the dimensional requirements of the Ordinance. Said property is located on Assessor Map 149 Lot 12 and lies within the General Residence A (GRA) District. **POSTPONED TO JANUARY 2025 (LU-24-137)**

The petition was **postponed** to the January meeting.

IV. PUBLIC HEARINGS – NEW BUSINESS

- A.** The request of **Port Harbor Land LLC (Owner)**, for property located at **2 Russell Street** requesting Conditional Use Permit Approval to allow a 40,000 square foot building footprint within the CD5 zone as permitted under Section 10.5A43.43 and a Conditional Use Permit to provide 340 parking spaces on separate lots where 334 are required under Section 10.11112.62 of the Zoning Ordinance. Said property is located on Assessor Map 124 Lot 12 and lies within the Character District 5 (CD5) Historic and Downtown Overlay Districts. (LU-24-191)

SPEAKING TO THE PETITION

[Timestamp 24:45] Attorney John Lyons representing the applicant was present with Ryan Plummer, Director of Development and Construction at 2 International Group. and project engineer Neil Hansen. He reviewed the petition and said they were asking for reapproval of the Conditional Use Permits that applied to the shared parking and increased footprint. He said they were approved for 440 parking spaces but the Board of Adjustment (BOA) allowed them to increase the number of spots from 440 to 446. He said they had been working on the construction management and mitigation plans to obtain the building permit. He said the property was three parcels and that three buildings would be placed on them, including space for community paths. Relating to the building footprint, he said they were required to have a ground floor no greater than 30,000 sf but they had 29,810 sf separated by a private street and liner building. He said their 64.4 percent of dedicated parking and 40.4 percent of community

property complied with the ordinance. He said if the 10 percent community space and 10 percent of workforce housing were required, he asked that it be waived given the fact that they were previously approved and far into the process. He described the mini Freedom Trail that Portsmouth would have when the project was completed. He said he believed they were vested.

[Timestamp 32:42] Chair Chellman said the applicant was vested because the old regulations applied. Mr. Coviello noted that the Staff Memo had a concern about one of the parking spaces. Attorney Lyons said that issue was addressed by the BOA when they approved the variance and the applicant was able show that the way the parking space was designed wouldn't be an issue. Mr. Plummer said the parking space concern was that someone could not open an adjacent car's door. He said the BOA brought it to the City Staff's attention to decide whether to remove it or not. Chair Chellman said a motion could be made to have City Staff determine whether it should be deleted. Mr. Hewitt asked if there was a certain percentage of residential and commercial when the application was first approved and if that same mix would still be built. Attorney Lyons agreed. Mr. Giuliano asked what the timeline would be. Attorney Lyons said they were trying to get the building permit by December 15. Mr. Plummer said they hoped to break ground in the spring and that he had been talking to the City Staff about logistics. Mr. Giuliano asked if the Conditional Use Permits were part of the project extension. Attorney Lyons agreed.

Chairman 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

Conditional Use Permit – 10.1112.62 Shared Parking

- 1) *Councilor Moreau moved that the Board find that the Conditional Use Permit application meets the criteria set forth in Section 10.1112.62 and to adopt the findings of fact as presented. Mr. Giuliano seconded. The motion **passed** with all in favor.*
- 2) *Councilor Moreau moved that the Board find that the number of off-street parking spaces provided will be adequate and appropriate for the proposed use of the property and to grant the Conditional Use Permit as presented with the following **condition**:*
 - 2.1) *The shared parking arrangement shall be secured by a covenant acceptable to the City and recorded at the Rockingham County Registry of Deeds.*
 - 2.2) *The number of spaces may be decreased by 1 space, as determined by staff, without impacting the approval.*

*Mr. Giuliano seconded. The motion **passed** with all in favor.*

Conditional Use Permit – 10.5A43.43 Maximum Building Footprint

- 1) *Councilor Moreau moved that the Board find that the Conditional Use Permit application meets the criteria set forth in Section 10.5A43.43 and to adopt the findings of fact as presented. Mr. Giuliano seconded. The motion **passed** with all in favor.*
- 2) *Councilor Moreau moved that the Board grant the Conditional Use Permit as presented. Ms. Conard seconded. The motion **passed** with all in favor.*

B. The request of **Hogswave LLC (Owner)**, for property located at **913 Sagamore Avenue** requesting a Wetland Conditional Use Permit from Section 10.1017.50 for 9,574 square feet of disturbance within the wetland buffer area for re-development including demolition of the existing dwelling, construction of a new dwelling, re-configuration of the gravel driveway, pervious paver patio, and deck, grading, utility connections and landscaping. Said property is located on Assessor Map 223 Lot 27 and lies within the Waterfront Business (WB) District. (LU-24-141)

SPEAKING TO THE PETITION

[Timestamp 41:05] Project engineer John Chagnon was present on behalf of the applicant, along with the owners John and Heidi Ricci. Mr. Chagnon reviewed the petition as stated above. He noted that the Conservation Commission recommended approval to the Board with three conditions that concerned the proposed tree size, adherence to the landscape standards, and the installation of wetland buffer markings. He said the BOA approved variances for the frontage and residential use of requirements and that the applicant agreed with all the conditions.

[Timestamp 43:40] Vice-Chairman Mahanna asked if the project could move the building outside of the buffer. Mr. Chagnon said the design of the house took the ledge into consideration by having the garage at a higher elevation and over the ledge so that it did not have to be blasted. He said the Conservation Commission agreed that blasting the ledge would create more disturbance because it was a site disturbance and required more erosion control and site construction techniques to do it safely. Vice-Chair Mahanna asked if it was just a financial hardship. Mr. Chagnon said it was an environmental concern and that the Conservation Commission agreed. It was further discussed. The applicant Mr. Ricci said the size of the house was redesigned so that it fit and they did not have to blast. Vice-Chair Mahanna said the concern was the wetland setback and whether it was physically possible to move the structure outside the setback. Mr. Ricci said there were environmental disadvantages to it.

Chairman Chellman opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DISCUSSION OF THE BOARD

[Timestamp 46:56] Vice-Chair Mahanna said the Board did not have the information that explained the environmental impact and that they were deliberating on moving a full building

inside a setback when there were other available locations. He said he was not in favor. Mr. Hewitt agreed. Chair Chellman said the Conservation Commission reviewed and approved it. Mr. Almeida asked if the Conservation Commission's meeting minutes were available. Mr. Stith said the minutes were not completed but the action sheet had been published and was summarized in the Staff Memo. Councilor Moreau said she thought there was enough summarization in the Staff Memo about what led the Conservation Commission to approve it and that she was not in favor of postponing. It was further discussed.

DECISION OF THE BOARD

*Vice-Chair Mahanna moved to **continue** the application to the December 19 meeting. Mr. Hewitt seconded. The motion **failed** by a vote of 3-6, with Vice-Chair Mahanna, Mr. Hewitt, and Mr. Bowen voting in favor.*

Wetland Conditional Use Permit

- 1) *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. Mr. Almeida seconded. The motion **passed** with all in favor.*
- 2) *Councilor Moreau moved that the Board grant the Conditional Use Permit with the following **condition**:*
 - 2.1) *Wetland boundary markers shall be permanently installed prior the start of construction in locations noted on plan set.*

Ms. Conard seconded.

[Timestamp 51:17] There was further discussion about whether blasting in the area would be an environmental hazard. Vice-Chair Mahanna said blasting was normal in that area and was a short-term environmental impact vs putting a house inside the buffer area.

*The motion **passed** by a vote of 7-2, with Vice-Chair Mahanna and Mr. Hewitt voting against.*

- C. The request of **Kevin Shitan Zeng Revocable Trust of 2017 (Owner)**, for property located at **377 Maplewood Avenue** requesting a Conditional Use Permit from Section 10.814 for a Detached Accessory Dwelling Unit. Said property is located on Assessor Map 141 Lot 22 and lies within the General Residence a (GRA) and Historic Districts. (LU-24-133)

SPEAKING TO THE PETITION

[Timestamp 59:25] Attorney Derek Durbin was present on behalf of the applicant. Project designer Brendan McNamara was also present via Zoom. Attorney Durbin passed out supplemental information to the Board and reviewed the petition. He said there were two buildings on the lot, a two-story single family residence and a larger dilapidated one-story

building behind it. He said they wanted to replace the one-story building with a 1-1/2 story ADU with an attached garage for the owner's mother. He said dimensional relief was granted by the BOA and that the Historic District Commission (HDC) supported the project at a work session. He said the owner wanted modification of the allowable footprint to allow a one-car garage that would also provide storage. He reviewed the reasons why the modifications were justified.

[Timestamp 1:08:20] Mr. Coviello asked about mitigating construction vehicles. Mr. McNamara said construction vehicles could use a car park area on the adjoining property. Councilor Moreau asked if the HDC fully approved the project. Attorney Durbin said they reviewed it at a work session and there was no negative feedback and that the HDC wanted the back building demolished. He said the ADU unit would be 749 square feet. Mr. Bowen asked if all the existing back structure would be removed, and Attorney Durbin 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

Detached Accessory Dwelling Unit Conditional Use Permit

- 1) *Mr. Coviello 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. Vice-Chair Mahanna seconded. The motion **passed** with all in favor.*
- 2) *Mr. Coviello moved that the Board grant the following modification:*
 - 2.1) *Modification from Section 10.814.434 to allow a building footprint of 1,104 square feet.*

*Mr. Giuliano seconded. The motion **passed** with all in favor.*
- 3) *Mr. Coviello moved that the Board grant the Conditional Use Permit with the following **conditions**:*
 - 3.1) *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.*
 - 3.2) *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.

- 3.3) *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.*

*Vice-Chair Mahanna seconded. The motion **passed** with all in favor.*

[Timestamp 1:15:46] Mr. Hewitt referred to Robert's Rules and asked if the Chair had to ask the Board to vote before the discussion ended if someone wanted to call the question. Chair Chellman said there was some discretion to that, but provided that all procedures were followed, he thought Mr. Hewitt was correct.

- D.** The request of **Lawrence P. Bornheimer Revocable Trust and Roman Catholic Bishop of Manchester (Owners)**, for property located at **119 Diamond Drive and 827 Woodbury Avenue** requesting Preliminary and Final Subdivision approval for a Lot Line Revision between Map 220 Lot 31 and Map 219 Lot 39 to relocate the common boundary line to encompass existing encroachments including a fence, retaining wall and drainage features. Said properties are located on Assessor Map 220 Lot 31 and Map 219 Lot 39 and lies within the Single Residence B (SRB) District. (LU-24-199)

SPEAKING TO THE PETITION

[Timestamp 1:17:27] Brenda Kolbow of TFMoran was present on behalf of the applicant and reviewed the petition. She said the lot abuts the Corpus Christi parish lot and shares a common boundary line and that the lot line was proposed to be revised to compass a fence, retaining wall, and drainage features. She said it would bring the applicant's lot more into compliance. She noted that the owner wanted to clear up the issue so that he could sell the property.

[Timestamp 1:20:17] Councilor Moreau said the additional land was created based on where it already encroached instead of just teeing it off. Ms. Kolbow said there was a lot of back and forth between the applicant's attorney and the church and that they just wanted to encompass the minimum amount of encroachments. Ms. Giuliano asked if there was any information from the church. Mr. Stith said there was a letter of authorization from the church in the packet.

Chair Chellman opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DISCUSSION OF THE BOARD

[Timestamp 1:22:18] Mr. Coviello said he had a hard time with the property lines that were being created, given that one of the two property owners did not own their land and it was likely that the other owner wouldn't own his land in the future. He said the Board would be left with a strange condition and variances coming down the road in the future and he thought it was an odd way to solve the problem. He said there was a burden on future property owners. Councilor Moreau said the applicant was clearing up the burden because there were encroachments. It was further discussed. Vice-Chair Mahanna said it probably came down to how much money the applicant wanted to pay per square footage of land. He said the Board was requesting a waiver to the subdivision standards, and he asked what they were giving up in way of standards and what extra they would have to do if they did not grant the waiver. Mr. Stith said the applicant would have to show the natural features on the church lot.

DECISION OF THE BOARD

Subdivision Waiver

1. Councilor Moreau moved that the Board grant the requested waivers to the Subdivision Standards from Section IV.9/V.8 Requirements for Preliminary Plat and Requirements for Final Plat.
 - a) Strict conformity would pose an unnecessary hardship to the applicant and waiver would not be contrary to the spirit and intent of the regulations.

Vice-Chair Mahanna seconded. The motion **passed** with all in favor.

Subdivision

- 1) Councilor Moreau 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. Vice-Chair Mahanna seconded. The motion **passed** with all in favor.
- 2) Councilor Moreau 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.

Vice-Chair Mahanna seconded. The motion **passed** with all in favor.

- E. The request of **Northeast Credit Union (Owner)**, and **Liberty Mutual Insurance Company (Owner)**, for property located at **100 Borthwick Avenue and 0**

Borthwick Avenue requesting Preliminary and Final Subdivision approval to adjust the boundary between Map 240 Lot 3 and Map 259 Lot 15 by adding approximately 4.88 acres to Map 240 Lot 3. Said property is located on Assessor Map 259 Lot 15 and Map 240 Lot 3 and lies within the Office Research (OR) District. (LU-24-151)

SPEAKING TO THE PETITION

[Timestamp 1:28:05] Jeff Kilburg of Apex Design was present on behalf of the applicant. He described the two properties and said it was a rightful ownership transfer. He said the BOA approved it at their October meeting. He said the parking spots would be reduced to 22 spaces and the Northeast Credit Union building would be converted to a medical office building.

Councilor Moreau confirmed that the only access to the parking lot was through the easement but there was a pedestrian bridge that people could use.

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

Subdivision

- 1) *Mr. Giuliano 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. Coviello seconded. The motion **passed** with all in favor.*
- 2) *Mr. Giuliano 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.*

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

V. CITY COUNCIL REFERRALS

A. Recommendation on FY2026-FY2031 Capital Improvement Plan

[Timestamp 5:30] Mr. Bowen brought up the City's housing policy and parking. He said there was a provision that said the City should support new workforce housing development in designated areas through a provision of capital improvements and services and proactively submit projects that support these principles to the annual capital improvement process. He said the plan had 250 million dollars but nothing for housing. He said there were a things the City could do in terms of infrastructure providing for developers that could be used as part of a negotiation to get some of the units at workforce housing level. He said there were over 500 units that were either approved or in the pipeline within the last year but none of them were at workforce housing level. He said the Board should be recommending that some money be added for workforce housing. Ms. Conard said the Housing Committee was developing a recommendation to create and fund the housing trust fund, which would include recommendations for funding amounts and potentially updating language for where the money would come. She said it would not be recommended for funding in FY 26. Chair Chellman said some of the issues Mr. Bowen raised could be regulatory changes as well in terms of how to address infrastructure needs for a particular project. He said it was something to bring into the zoning amendment discussions and discuss with the Housing Committee. Mr. Bowen brought up the Portsmouth Avenue and Commerce Way area, where there would be significant housing development in the coming years and said it might be desirable to have the City's say on parks and roads and so on as part of an urban concentration. He said that might be an example of why such money might be in the CIP. Chair Chellman said there was a need for another parking garage, noting that occupancy was running over 95 percent in the Hanover Street Garage and he thought it might be a mistake to not have a placeholder in the CIP for something that could be a 25-50 million dollar item. He suggested putting a placeholder for it or putting it on the list. Ms. Conard said the City Staff would support some sort of preliminary design placeholder in FY27 and had offered up 100,000 million dollars as a placeholder. She said it would come from the parking special revenue fund. It was further discussed. Mr. Bowen said there were projects that would result in at least 150 or more private parking spaces being removed from the downtown area in a few years He said developers would prefer to not have a parking requirement in the CD4 and CD5 areas and thought it made more sense to consolidate parking in one place. Councilor Moreau said a location should be found before a design. Ms. Conard said that would be part of it and would speak to site selection feasibility. Chair Chellman said he would support it for next year instead of waiting another year.

*Councilor Moreau moved that the Board recommend a new element sheet for a new parking garage with an allocation of \$150,000 for FY27 to start the process for site selection and feasibility. Mr. Almeida seconded. The motion **passed** with all in favor.*

*Councilor Moreau moved that the Board recommend adoption of the Capital Improvement Plan to the City Council. Mr. Coviello seconded. The motion **passed** with all in favor.*

B. Osprey Landing Open Space

[Timestamp 1:34:00] Chair Chellman said Osprey Landing wanted to retain ownership and have the City take control. Mr. Stith agreed and showed the parcel on the map. He said it was currently being used as open space. Mr. Hewitt as if the land was actively being used. Mr. Stith agreed and said it was being mowed and maintained. Mr. Hewitt asked if the City would take

over the land as is or would develop it into something else. Mr. Stith said Osprey Landing would maintain ownership and give the City enforceable rights to use it as a park. Mr. Giuliano asked if there were other covenants or easements on the development that were currently recorded through the City. Chair Chellman said it stated as so but that he didn't see them. Mr. Stith said he was sure there were. Chair Chellman said the memo was just a summary of what the provisions were and that there were no other easements or covenants attached. He said the Board could make a recommendation subject to the Legal Department's review of the covenants.

*Ms. Conard moved to **continue** to the December 19 meeting to get additional information on the restrictions. Mr. Almeida seconded. The motion **passed** with all in favor.*

C. 27 Hancock Street

[Timestamp 19:42] Councilor Moreau said it was a City Council referral and that there was a slight encroachment on a City sidewalk. She said the City Council approved it based on whether the Planning Board would approve it or waive it. Chair Chellman said it had to be waived.

*Councilor Moreau moved that the Board waive the referral and report requirement pursuant to Ordinance Section 11.602(c). Vice-Chair Mahanna seconded. The motion **passed** with all in favor.*

VI. OTHER BUSINESS

A. Chairman Updates and Discussion Items

There was no discussion.

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

[Timestamp 1:41:43] Mr. Stith said four responses were received for the RFQ and were being reviewed. Mr. Giuliano asked what was available to the Board in terms of certification. Mr. Stith said he would forward anything he received about it to the Board. Chair Chellman said there was an online certification test.

VII. ADJOURNMENT

The meeting adjourned at 8:48 p.m.

Submitted,

Joann Breault
Planning Board Meeting Minutes Taker