

CITY OF SOUTH PORTLAND

Name of Body: Planning Board
Minutes for Meeting of: December 19, 2017
Meeting Begins: 7:00 p.m.
Meeting Location: Council Chambers, City Hall

MINUTES

Members Present

Kevin Carr, Chairperson
William Laidley
Linda Boudreau
Katherine Gatti
Mary DeRose
Leslie Dillon

Staff Present

Tex Haeuser, Planning & Develop. Director
Steve Puleo, Community Planner

Absent

District 2 vacant

Pledge of Allegiance

Chairperson Carr opened the meeting at 7:00 p.m. and welcomed all in attendance. He reviewed the meeting agenda and reminded the audience and Board of policies regarding a Planning Board Meeting and Public Hearings. He read into the record Planning Board Regulation #5, standard condition of approval: This approval is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. No project, plan or development previously approved by the Planning Board may be altered or modified without securing prior approval of the Planning Board in the form of an amended approval; provided however, that, if at any time it becomes necessary or desirable to make modifications to the project, plan or development, the Planning Director may approve modifications determined by the Planning Director to be de minimis in that they (i) do not amount to a waiver or substantial alteration of any condition or requirement set by the Planning Board; (ii) do not affect any approval standard; (iii) meet all applicable ordinances and laws; (iv) are reviewed and approved by all appropriate City staff and consultants; and (v) do not involve any changes to lot lines. De minimis changes include only the modifications listed in Section 24-27 of the Subdivision Ordinance and Section 27-140 of the Zoning Ordinance.

Item #1. Approval of the December 12, 2017, Planning Board minutes

L. Dillon stated that she has read the minutes but has not finished watching the video and will abstain from the vote.

K. Gatti motioned to approve the December 12, 2017, Planning Board minutes. W. Laidley seconded; (5-0) (L. Dillon abstained, District 2 vacant).

Item #2A. Consent Calendar – A. Amended Site Plan – Drive-thru Restaurant and Retail Development – CRT CII, LLC - 818 Main Street – Waiver request – FINDINGS

T. Haeuser introduced the item, stating that this is for the Dunkin Donuts going in where the Wok Inn used to be. The applicant was hoping to get an occupancy permit this week, however one condition of approval was an inspection showing that the stormwater management system is completed and functioning properly. The applicant has been caught by the winter weather and cannot complete the system with the conditions as is. He is assured that the system is well along in its construction, that there is no reason why it can't be completed once the weather improves, and that they have sufficient

performance guarantee funds to cover the cost in the event of a problem. As a consent calendar item, staff recommends approval for the amendment to the site plan with a waiver of the post-construction stormwater management plan to allow two occupancy permits, Dunkin Donuts and an office space prior, to the inspection report. There is the standard condition, another condition to provide the Stormwater Inspection Report no later than June 15th to the Planning Director, and a third condition to incorporate the previous Findings of Fact.

L. Boudreau motioned to approve the waiver request of Section 27-1536 (h)(1) to modify the Post-construction Stormwater Management Plan to allow two Occupancy Certificates prior to Stormwater Inspection Report, per Section 27-1536 (c)(2)(f); to approve the amended site plan application of CRT CII, LLC, dated December 18, 2017, to allow the scheduling of occupancy certificates for the Drive-thru Restaurant and Retail Development located at 818 Main Street, with the following conditions:

- 1. Planning Board Regulation #5, standard condition of approval: This approval is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. No project, plan or development previously approved by the Planning Board may be altered or modified without securing prior approval of the Planning Board in the form of an amended approval; provided, however, that, if at any time it becomes necessary or desirable to make modifications to the project, plan or development, the Planning Director may approve modifications determined by the Planning Director to be de minimis in that they (i) do not amount to a waiver or substantial alteration of any condition or requirement set by the Planning Board; (ii) do not affect any approval standard; (iii) meet all applicable ordinances and laws; (iv) are reviewed and approved by all appropriate City staff and consultants; and (v) do not involve any change to lot lines. De minimis changes include only the modifications listed in Section 24-27 of the Subdivision Ordinance and Section 27-140 of the Zoning Ordinance.**
- 2. The applicant shall provide, no later than June 15, 2018, to the Planning & Development Director the Stormwater Inspection Report, per Section 27-1536(c)(2)(f) and will allow two Occupancy Certificates.**
- 3. The approval of the amended site plan shall incorporate the Findings of Fact and all conditions of approval dated September 27, 2016.**

W. Laidley seconded; (6-0) (District 2 vacant).

FINDINGS

L. Boudreau motioned to accept the findings. W. Laidley seconded; (6-0) (District 2 vacant).

K. Carr welcomed Mr. Puleo back.

Item #3. PUBLIC HEARING – Final Major Subdivision and Site Plan Review – Multi-use Building and West End Apartments – 586 Westbrook Street – Avesta Housing – FINDINGS

Avesta Housing is requesting a final major subdivision and site plan application review to develop a five story, mixed-income, mixed-use project located at 586 Westbrook Street. The ground floor will include a 4,000 square foot retail space, a small office space for Opportunity Alliance’s “Resource Hub”, and community space for Avesta’s residents. The upper four floors will consist of a range of unit types including 22 Studios, 16 One-Beds, 16 Two-Beds, and 10 Three-Bedroom apartments for a total of 64 units. The property is further identified in mention is Assessor’s Map 50, Lot 74 and 74B, located within the West End Neighborhood Center District (WNC).

Public hearing notices were mailed on December 11, 2017, to the 19 property owners within 500 feet of the proposed project, the applicant, and were sent via email to the Conservation Commission, Planning

Board, and City Council. In addition, a legal advertisement providing notice about the project was posted in the *Portland Press Herald* on December 8, 2017.

T. Haeuser introduced the item. This is the second approval step for the Avesta Housing mixed-use affordable housing project on Westbrook St. At the last Planning Board meeting, the Board saw many details about the project—more than normal for a preliminary plan stage. He noted that there were new notices and a new legal ad sent out.

He noted that the traffic impact fee is wrong in the findings but correct in the conditions (condition #9). It should state \$3600, not \$4200. He noted that stormwater system was reviewed at the last meeting. The applicant has provided a capacity to serve letter for sanitary from the Director of Water Resource Protection but they are still waiting on a capacity to serve letter from Portland Water District. This has been added as a condition.

They did not have peer review architect comments at the last meeting. This is the first midrise to come under the City’s Commercial and Neighborhood Activity Center design standards. Stephen Blatt, the peer review architect, noted that the proposal was “well presented narratively and graphically.” He noted that it addresses the standards and there was thoughtful consideration where it does not. He believes the project will “establish a standard of design excellence.” They need waivers for the fiber cement as exterior material and to allow the top of the building to not have a roof overhang. This flexibility is allowed in the design standards and the waiver requests are supported by Mr. Blatt.

Staff recommendation continues to be for approval. He reviewed the other waivers and noted that the 12th condition does not get put on the plan. The other conditions are fairly standard.

K. Carr said the applicant did a thorough job last time. They have an opportunity to speak again and this is a time to say anything they wish they had said last week but didn’t.

Tyler Norod, Avesta Housing, thanked the Board for meeting tonight and said it was a pleasure working with staff. The plans have not changed in how it’s laid out. They have responded to comments from various City departments and the peer review architect.

PUBLIC HEARING OPEN

W. Laidley asked Mr. Haeuser what the City does with the money from the traffic impact fee.

T. Haeuser said it goes to Richard Berman or his company to reimburse for the work done at the intersection of Westbrook and Western during one phase for the Brickhill development project. He front-ended the improvements and they established a fee system to pay him back. In other cases, it could go into an account reserved for future improvements such as a traffic new signal. In this case, the work was done first and they’re paying it back.

W. Laidley asked who it’s administered by. **T. Haeuser** said the Planning department participates but it’s through the finance department. **S. Puleo** said they have to establish a contract and pay the funds within a certain period or return the funds with interest accrued. This fund is revolving because they haven’t paid down the front-end cost to realign the intersection and put a new signal in. They are still collecting fees until they pay the account down. The Board will see more projects coming through and there are several other types of impact fees that they collect on.

W. Laidley asked the applicant if these are apartments or condos. **T. Norod** said apartments and **W. Laidley** asked why there is language about a condo agreement.

T. Norod said it's unique—Avesta acquired land from the variety store owner and part of the deal is to move the store into the new building. This space will become a ground-floor condo unit. To separate ownership, the store space is for the variety store owner and the rest of the building is for Avesta. It's not a traditional condominium in the sense that each unit is a condo.

W. Laidley asked Mr. Haeuser if this becomes part of the Long Creek stormwater management system.

T. Haeuser said he doesn't believe so. **S. Puleo** this area is not within the designated Long Creek watershed. It's a sub-watershed to Long Creek—the tidal portion, not the stream portion, which is managed under the Long Creek Watershed Management District. **T. Haeuser** said this is similar to Brick Hill.

W. Laidley suggested separating these for the public to understand why there are two coexisting setups would be a good newspaper article.

M. DeRose asked for more of an explanation about the fiber cement and if it is fireproof.

Jesse Thompson, Kaplan Thompson Architects, said it is used a lot and is a cement product, so it's noncombustible. It's durable and low maintenance. When the design standards were written, perhaps it wasn't an option.

M. DeRose said a "meadow" sounds lovely but she's seen parcels of meadow that are weedy and get filled with litter. She asked how it will be maintained.

Matt Phillips, Carroll Associates, said it is a seed mix of native perennial wildflowers, legumes, and grasses. There is some color through the flowers. It is low maintenance and a durable landscape. Knowing this piece may be developed in the future, they didn't want to put in anything too permanent but still screen cars and stabilize the soil. It will have to be mowed once or twice a year to control and it will be maintained.

M. DeRose said there's a path that people have used for the past 75 years as a shortcut to go shopping. She thinks they will probably end up with that same path through this area. **M. Phillips** thinks that will probably happen again and doesn't think Avesta will have a problem with that.

L. Dillon asked for the timeline for the project and when a certificate of occupancy would be given.

T. Norod said they have an application deadline with Maine Housing for tax credits on February 8th. They hope to know sometime in March. If they get the credits, it's largely a go. It takes a couple months to finalize documents, go out to bid, and to close financing. If everything works out, they may be able start construction in August or September 2018. It's not unheard of to take

another year. If that happens, it will take about a year to complete. If they get in the ground next September 2018, residents could move in September, October, or maybe even August 2019. It would be pushed out a year if they're not lucky this round..

W. Laidley said many of the development items are consistent with 2006 report titled *Charting Maine's Future* by the Brookings Institution. The density, using existing infrastructure (roads, the separated stormwater system), and affordable housing. Some may see this proposal as too big but those on the Board long enough once saw a bigger residential proposal for Clark's Pond Parkway that wasn't built for various economic reasons, size not being one of them.

PUBLIC HEARING CLOSED

L. Boudreau motioned to approve the waiver request of Section 27-1428(a), Time Limitation, for a period of 18-months, with the site plan permit expiring December 19, 2019; approve the waiver request of Section 27-1536(h)(1) to modify the Post-Construction Stormwater Management Plan to treat less than a 100% of the stormwater runoff from all of the disturbed areas; approve the waiver request of Section 27-1575(d)(3)(b) to allow the use of "Fiber Cement" as an exterior material, per Section 27-1574(e)(viii)(f) of the review standards; approve the waiver request of Section 27-1575-A(e)(3) to allow design of the building without a cornice or roof overhang, per Section 27-1574(e)(viii)(f) of the review standards; approve the Final Major Subdivision and Site Plan application of Avesta Housing dated November 29, 2017, through December 15, 2017, and drawings November 27, 2017, through December 15, 2017, for a mixed-use building at 586 Westbrook Street as follows:

CONDITIONS

1. Prior to release of the signed subdivision mylar, the applicant shall pay all outstanding review escrow account fees and post the necessary performance guarantee(s) in such amount(s) as established by the City.
2. Planning Board Regulation #5, standard condition of approval: This approval is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. No project, plan or development previously approved by the Planning Board may be altered or modified without securing prior approval of the Planning Board in the form of an amended approval; provided, however, that, if at any time it becomes necessary or desirable to make modifications to the project, plan or development, the Planning & Development Director may approve modifications determined by the Planning & Development Director to be *de minimis* in that they (i) do not amount to a waiver or substantial alteration of any condition or requirement set by the Planning Board; (ii) do not affect any approval standard; (iii) meet all applicable ordinances and laws; (iv) are reviewed and approved by all appropriate City staff and consultants; and (v) do not involve any change to lot lines. *De minimis* changes include only the modifications listed in Section 24-27 of the Subdivision Ordinance and Section 27-140 of the Zoning Ordinance.
3. Prior to the scheduling of a preconstruction meeting, the applicant shall post a sedimentation control inspection escrow and provide from Portland Water District (PWD) a capacity to serve letter.
4. Prior to the scheduling of a preconstruction meeting, the Corporation Counsel, at the applicant's expense, must review and approve as to form all documentation related to the Condominium Association. Prior to the issuance of the building permit, the applicant shall provide the Planning & Development Director with proof of filing the Condominium Association's Articles of Incorporation with the Secretary of State's Office and with evidence

of the recording of the Condominium Declaration at the Cumberland County Registry of Deeds.

5. The property is subject to a Stormwater Management System Maintenance Agreement that runs with the land and is binding upon the property owner and its successors and assigns as their interests may from time to time appear. The City's Corporation Counsel, at the applicant's expense, must review and approve all legal documentation relating to the stormwater management system for legal sufficiency. Prior to the scheduling of a preconstruction meeting, said agreement shall be duly executed and recorded by the applicant at the Cumberland County Registry of Deeds, with a copy of the recorded instrument contemporaneously provided to the Planning & Development Director.
6. Prior to the issuance of a Certificate of Occupancy for the project, the applicant must submit an inspection report to the Code Enforcement Officer documenting that the stormwater facilities have been installed and are functioning as designed and approved and are fully operational. This inspection report must be prepared by a qualified third party inspector as defined in Section 27-1536(c)(3)(e) of the Zoning Ordinance, as may be amended.
7. On or by July 15th of each year, a completed and signed certification shall be provided by each property owner or applicant to the City's Director of Water Resource Protection in a form provided by that Department, certifying that a qualified third-party inspection employed by the property owner or applicant has inspected, cleaned and maintained the stormwater management facilities, describing any deficiencies found during inspection of the stormwater management facilities and certifying that the person has repaired any deficiencies in the stormwater management facilities noted.
8. Prior to the issuance of a building permit, the applicant shall provide the Planning & Development Director with satisfactory evidence that one of the first six methods set forth in Section #3(B) of the City's Site Plan application form relating to the applicant's financial capacity is in place.
9. Prior to issuing a certificate of occupancy, the applicant will provide to the Planning & Development Director the required traffic impact fee of \$3,600.00 (\$150.00 per vehicle trip PM Peak Hour) for the improvements to the Western Avenue and Westbrook Street signalized intersection.
10. Prior to the issuance of any sign permit, the applicant shall provide the Planning & Development Director with details of the location, size and materials pursuant to Section 27-1561 of the Zoning Ordinance, as may be amended.
11. Because a portion of the landscaping, pavement, overhead canopies, steps, bike racks and other site amenities are proposed to be located in the Westbrook Street right-of-way, prior to issuance of any building permit, the applicant, or its successors or assigns, shall execute a license and indemnification agreement with the City, in a form satisfactory to the City's Corporation Counsel, whereby the applicant, or its successors or assigns, agrees to defend and indemnify the City for any damages resulting from the construction and maintenance of such site amenities in the City's right-of-way.
12. [this condition does not get printed on the subdivision plan mylar, only on the site plan layout sheet]:
 Final approval is subject to amending the subdivision plan mylar to incorporate all changes and the conditions of approval voted by the Planning Board at its December 19, 2017 meeting into the plan. Inclusion of such changes shall be reviewed for accuracy and inclusion by the Planning & Development Director prior to Planning Board signature of the subdivision plan mylar.

K. Gatti seconded; (6-0) (District 2 vacant).

FINDINGS

L. Boudreau motioned to accept the findings. W. Laidley seconded; (6-0) (District 2 vacant).

Item #4. Public Comment on Items Not on the Agenda

No comment

Item #5. Comments from the Planning Board and Planning Director

T. Haeuser said that the City Manager wants feedback regarding meeting days. Some City Councilors feel that Monday is not the best day for them to meet and there is potential they could choose a different day. He asked the Board if they'd like to meet Mondays or Wednesdays if the Council chooses Tuesdays.

K. Gatti does not want to meet on Mondays. She spends Monday nights looking through the packet. She is open to the day changing but thinks it should be later in the week. **W. Laidley** said Wednesdays and **M. DeRose** does not prefer Mondays. **L. Dillon** agrees that Monday isn't a good move for them. Councilors brought up the point that many Mondays are holidays. **L. Boudreau** doesn't have a preference. **K. Carr** shares Ms. Dillon's concerns and doesn't have a problem with Wednesday. They would still get packets on Friday.

The Board discussed their packets and **T. Haeuser** said the related question is tablets. **M. DeRose** asked what would happen to their full-sized plans in that case. **K. Carr** said there is value in full-sized plans. In terms of preparation of packets and ability to make edits on the fly, there is some appeal to digital. **L. Dillon** said Portland is all electronic, so other people do it. She prefers digital. **K. Gatti** and **L. Boudreau** prefer paper packets.

T. Haeuser noted that Council approved a budget transfer to support a new planner.

W. Laidley passed out an article from *AARP News* to each member about accessory homes in New Hampshire.

T. Haeuser thanked Mr. Laidley for mentioning the Bookings Institute report.

K. Carr mentioned the Cottage Road traffic calming simulation. Having been up and down the road a few times, he saw that people did slow down but also frequently encroached on the other lane.

T. Haeuser said the Committee will come forward with a middle-level recommendation for improvements focused at Pillsbury and Cottage. The grand scheme of putting bump-outs down, stormwater systems, and street lights became a Thornton Heights-scale project without benefit of Water Resource Protection capital. They are hoping to go 50/50 on money with the state. If bump-outs went in, they would be set a foot back.

Item #6. Adjournment

8:00 p.m. L. Boudreau motioned to adjourn. K. Gatti seconded; (6-0) (District 2 vacant).

Please Note: No new agenda items will be begun after 11:00 p.m. If during the course of a Planning Board meeting it becomes apparent that the Board will not reach certain agenda items, the Board may, prior to its 11:00 p.m. cut-off, offer to the proponents of such items the opportunity to have their items tabled immediately to the beginning of the next regularly scheduled meeting. Agenda items remaining after the 11:00 p.m. cut-off time will automatically be tabled to the next regularly scheduled meeting.