

CITY OF SOUTH PORTLAND

Name of Body: Planning Board
Minutes for Meeting of: October 24, 2017
Meeting Begins: 7:00 p.m.
Meeting Location: Council Chambers, City Hall

MINUTES

Members Present

Adrian Dowling, Acting Chair
William Laidley
Linda Boudreau
Leslie Dillon
Katherine Gatti
Mary DeRose

Staff Present

Tex Haeuser, Planning & Develop. Director
Steve Puleo, Community Planner
Sally Daggett, Corporation Counsel

Absent

Kevin Carr, Chairperson

Pledge of Allegiance

Acting Chair Adrian Dowling opened the meeting at 7:00 p.m. and welcomed all in attendance. He reviewed the meeting’s 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 October 10, 2017, Planning Board minutes

L. Boudreau motioned to approve the October 10, 2017, Planning Board minutes. W. Laidley seconded; (6-0) (K. Carr absent).

Item #2A. Consent Calendar – Performance Guarantee Releases – Release of Development Performance Guarantees – FW Webb at 150 Postal Way; Meetinghouse Lofts at 391 Pine Street; Ridgeland Gardens at 101 Ridgeland Ave

T. Haeuser introduced the item, stating that David Kasik certified that they are able to release \$66,780.00 in Public Improvements, \$15,000.00 in Erosion Control, and \$5,310.00 in Landscaping for FW Webb at 150 Postal Way, Meetinghouse Lofts at 391 Pine Street, and Ridgeland Gardens at 101 Ridgeland Avenue.

K. Gatti motioned to approve the total release of the \$66,780.00/Public Improvements, \$15,000.00/Erosion Control, and \$5,310.00/Landscaping performance guarantees for the projects listed above. W. Laidley seconded; 6-0 (K. Carr absent).

Item #3. PUBLIC HEARING – Development of a Non-Conforming Lot of Record – Single Family Home – 10 Cumberland Rd – Alexander Anastasoff – FINDINGS

Mr. Alexander Anastasoff is requesting a site plan approval to develop a non-conforming residential lot of record located at 10 Cumberland Rd. This nonconforming lot of record is known as Lot 58 of the Plan of Cumberland Manor and is 5,000 square feet in size. The applicant proposes to construct a 1,668 square foot two-story single family home with a covered front porch and an attached garage on this parcel. The site plan provides for two off-street parking spaces; one in the garage and one on a paved driveway. Public utilities are available in the Cumberland Road ROW. The property is further identified as Assessor's Map 34, Lot 204, located within the Residential District (A) and the Standwood Park Neighborhood.

Public hearing notices were mailed on October 16, 2017, to 63 property owners within 500 feet of the proposed project and the applicant and sent by email to the Conservation Commission, Planning Board, and City Council.

T. Haeuser introduced the item and showed the location on a map. He showed the lot on street view. He reviewed utilities, stating that the proposed new home will be connected to the sanitary sewer via a four-inch main to the City- owned sanitary sewer main located in the Cumberland Road ROW. The proposed development is located in the City's separated sewer and storm drain system. The Director of Water Resource Protection has provided a "Sanitary Capacity Allocation" and "Authorization to Discharge to the City MS4" letter. They are seeking to connect overhead for electrical, telephone, and cable, and are asking for a waiver. In regard to stormwater, the proposed home will be constructed with a full basement with a six-inch foundation drain with a back-flow preventer. The foundation will be connected to one of the three "Beehive" catch basins that are connected to convey the stormwater runoff to the City's storm drain system. A two-story is proposed to minimize the footprint and reduce the amount of runoff leaving the site. The site's grading will move the runoff via shallow drainage swales to pick up the roof runoff to two catch basins located on the southeastern and southwestern sides of the proposed home. These two catch basins are connected to the third catch basin located at the front yard property line by a 10" storm drain pipe. The drainage plan also includes a Roof Dripline BMP, which is an area along the face of the foundation that extends two to three feet from the foundation. The applicant is proposing a roof dripline BMP along the westerly side of garage and along the northerly and northeasterly sides of the principal structure as well.

He reviewed landscaping, which will include foundation shrub plantings, and lighting, which will be through conventional fixtures. He asked the applicant to address the nonconformance. Staff recommendation is for approval. He reviewed the conditions.

Nancy St. Clair, St. Clair Associates, shared a PowerPoint presentation, showing part of the visual analysis. She showed the aerial photo of the site and explained the orientation. It is a 5000 SF nonconforming lot of record, 50'x100'. There are deciduous trees on the backside of the property and houses on either side. She showed the site plan; to the left is the house on the corner of Evans and Cumberland. The house to the right sits 5.8 feet from the side property line, so they have a 6.2 foot side yard setback. The home to the right is two stories. She showed photos of the houses on both sides and other recently constructed homes on Cumberland Road. There is a variety of housing types but with common themes. She showed the photo simulation of the proposed house, showing a two story home with a covered porch. The garage is set back. She motioned to Mr. Anastasoff, who showed siding samples.

They are seeking a waiver for overhead electric. The applicant has worked with CMP but it is difficult to do a tie-in mid-span. This would be consistent with overhead services in the neighborhood and was practice with newer homes in the area.

The letter from the Water Resources Director identifies the capacity to serve the home from a sewer standpoint and authorization to tie into the City's stormdrain. There has been an analysis of the site to see how drainage comes into the site. The back end of the lot goes up and collects from the rear of homes on the adjacent street and the rear yards on either side. They had ensured that they were able to accommodate this flow and tie into the system. Because they are in the situation with the 12 foot separation, they had to see how they could adequately convey this runoff, and this is how they came up with their system. It was reviewed by the City's peer review engineer and Water Resources. She reviewed the roof dripline BMPs.

PUBLIC HEARING OPEN

Carla Donnangelo, 149 Evans St., is concerned about water coming into her property. The abutting properties are wet and she is concerned that anything built will force water into her yard. She wants to ensure she doesn't get more water in her yard and basement. She also asked if any trees will remain.

N. St. Clair asked Mr. Haeuser to show the site plan slide. At the rear of the site, the green dots are deciduous trees that will remain. The rear slopes up, and drainage comes down through the home immediately behind and a couple other backyards, including a portion of the backyard of Ms. Donnangelo, and goes into the lower front corner. They wanted to ensure they don't put water on abutting properties and are handling water onsite. She reviewed their proposed system. As part of their work, they need a plan to address stormwater generated by the site and not putting it onto someone else's property. Their plan was peer reviewed and she understands the comments. There are some dead trees; in order to construct, the trees in the front that are dead would come down. The trees in the back are more mature and will remain.

S. Puleo asked Ms. St. Clair to explain the foundation drain.

N. St. Clair explained the roof dripline BMP. When runoff hits edges where it would drip onto the ground is proposed stone that catches it on a stone layer and it goes down into draining material to an underdrain. This is for water shedding off the roof. She showed where these will be on the site plan. They collect roof runoff and put it into a filtration system and tie it into the street system. There are three points of surface inlet collection points going to the street system that never existed before.

K. Gatti asked about the intent of the property. **N. St. Clair** said it's a residential property that will be sold.

L. Boudreau complimented the team. There's nothing she can comment on; it's a great development. It respects the property on the right. She likes that they're retaining trees in the back. She expects in some ways the adjacent neighbors will benefit from the drainage system. The houses across the street are a perfect match. It's interesting that Cumberland Road had vacant lots at head of the street. It will blend nicely.

A. Dowling asked for existing conditions with utility lines.

T. Haeuser said the lines run on the other side of the street. They are following what others are doing by crossing the street with the line. **S. Puleo** said there is a problem with the location of the properties; it's midspan on the overhead. To connect underground it would be a larger run. In this case, he thinks the waiver is warranted because it would be such a long run.

W. Laidley prefers underground to cut down visual clutter but he defers to Mr. Puleo's judgement.

Russ Lunt, Brigham St., said this is a good project. He likes the way they explained drainage. That area gets a lot of water.

PUBLIC HEARING CLOSED

L. Boudreau motioned to approve the waiver request of Section 24-38 (F)(1) Requiring underground telephone, electrical, and cable utility connections to allow for an overhead utilities connection;

motioned to approve the site plan application of Alexander Anastasoff to build a single-family home on a nonconforming lot of record located at 10 Cumberland Road dated September 12, 2017, through October 16, 2017, and drawings dated June 8, 2017, through October 17, 2017, with the following conditions of approval:

- 1. Planning Board Regulation #5, standard condition of approval, as read by the Acting Chair at the opening of the meeting.**
- 2. Prior to the scheduling of a preconstruction meeting, the applicant shall pay all outstanding review escrow account fees, post the necessary performance guarantee(s) in such amount(s) as established by the City, post and sedimentation control inspection escrow, and pay all compensation and/or impact fees as determined by the Planning Board.**
- 3. Prior to issuing building permits, the applicant shall provide evidence to the Planning and Development Director that they have recorded the Certificate of Approval and Findings of Fact for the development in the Cumberland County Registry of Deeds (CCRD) and that they have signed the Level One Contractor's Erosion and Sediment Control Certification.**
- 4. Prior to issuing the certificate of occupancy, the applicant shall complete all improvements in accordance with the approved site plan, and said improvements shall have been inspected and found satisfactory by the City's Engineer or other duly designated person.**
- 5. Prior to issuing the certificate of occupancy, the applicant shall provide to the Planning and Development Director a certified "as-built" grading plan meeting the City's G.I.S. requirements; grades will not be modified without first obtaining a Planning Board approval.**
- 6. Prior to providing an occupancy permit, the applicant shall include a Stormwater Management Maintenance Plan acceptable to the Planning & Development Director that has been recorded at the Cumberland County Registry of Deeds. The owner of the property and all future owners shall be required to maintain all elements of the Drainage Plan as contained in the Stormwater Management Maintenance Plan.**
- 7. In accordance with Section 27-304 (f)(2), the height of the building shall not exceed 28 feet. This condition shall also be attached to the building permit.**
- 8. The area between the three street utility excavations shall be milled, so that pavement restoration is unified.**

K. Gatti seconded; 6-0 (K. Carr absent).

FINDINGS

L. Boudreau motioned to accept the findings. W. Laidley seconded; (6-0) (K. Carr absent).

Item #4. PUBLIC HEARING – Site Plan Review – 2112 Building Development – 2112 Broadway – 2112 Broadway Associates, LLC – FINDINGS

2112 Broadway Associates, LLC is requesting a site plan approval to construct a proposed 14,000 square foot multi-use building with industrial capabilities on the first floor and offices on the second floor located at 2112 Broadway. The proposed project includes the development of an energy efficient two-story building including parking and stormwater facilities next to an existing building onsite. The

additional parking areas will be increased to meet the multi-tenanted uses that onsite. Landscaping plans and the stormwater management system will also be upgraded within the site to address site impacts. The property is further identified as Assessor's Map 65, Lot 16B, located within the Commercial District (C).

Public hearing notices were mailed on October 16, 2017, to the 10 property owners within 500 feet of the proposed project and the applicant and sent by email to the Conservation Commission, Planning Board, and City Council.

T. Haeuser introduced the item and showed the location on a map, explaining the orientation. Relative to traffic, the existing use generates 45 trips in the AM peak hour and 32 in the afternoon peak hour. The new use would generate an additional 17 trips in each peak hour, which does not add up to a Traffic Movement Permit (TMP) from the Maine Department of Transportation (MDOT). The traffic engineer analysis concluded that it will not have a significant impact to the road network in the area.

Separately, there is a traffic signal warrant analysis at Sokokis and Broadway. This has been an intersection of concern for a number of years, and the new ramp brought trouble and concern. The City initially turned down the idea of the analysis but in this case, they think it's a high crash location. As for the currently project, they do not know if the traffic signal is warranted yet so they cannot set up a signal impact fee system.

Utilities will be underground and the building will be sprinkled. He reviewed stormwater, that the site has existing pavement features that direct the stormwater runoff into a ditch line and lawn areas. The rear property collects stormwater, which eventually drains to the abutting property's wet pond. Low Impact Development (LID) is proposed by creating a positive drain away from the building and a drip line filter to collect the roof runoff of the new building. The applicant is proposing to install a catch basin to direct the stormwater to a new catch basin, which is connected to the City's system. The applicant is also proposing to include the vegetated underdrained soil filter Best Management Practice (BMP) to improve the water quality from the sheet flow off the existing driveway prior to convey the stormwater to the City MS4 separate storm drain system. Landscaping will be enhanced and lighting fixtures will be LED cutoff fixtures.

Staff recommendation is for approval and he reviewed conditions.

PUBLIC HEARING OPEN

Paul Collins, owner of 2112 Broadway, stated that he is one of two owners. They have recently purchased the property and years ago Sebago drew up the idea of adding additional space to the property. They thought it was a good idea and are working with Acorn Engineering.

Will Savage, Acorn Engineering, described the project as an urban infill commercial development. There is presently a 2100 SF mixed-use building. He showed the aerial view and gave a brief overview. The northern part is the US Coast Guard exchange and to the south is Creative Work Systems. The uses are served by 44 parking spaces. There is a large self-storage unit to the north. The wetland inventory survey found no existing wetlands on site.

They felt this is an underutilized site with a fair amount of existing impervious serving only 44 parking spaces. The area to southeast corner is where they will propose the new building, which will be two stories, mixed-use with industrial on the first floor and offices on the second. Parking was increased to meet requirements and they've included bike parking to reduce the overall parking requirements. They are adding 48 parking spaces for a total of 92. They are looking to improve the efficiency of existing impervious, meaning they have existing drive aisles with no parking on either side. The most efficient use

of impervious is when you have a double-loaded parking stall, so they have added a significant amount of additional parking by not having a large increase in overall impervious. They have analyzed for circulation for fire trucks and added a 20-foot section of paving to the southwest portion of the building. They incorporated the existing turning movement—and existing truck loading dock and an overhead door—to maintain overall circulation. Solid waste will be provided to the east of the existing building and screened from Broadway.

As for utilities, they sent Ability to Serve letters and designed in conformance with respective companies. Power is presently served by overhead power lines and the last pole is located north of the existing building. They propose to continue the extension of overhead to the northeast corner of the proposed building. However, they have provided flexibility within plans.

As for grading, new impervious is redirected to the east of the building, where they are adding new parking and impervious. Grades will direct stormwater into filters. They will provide water quality and quantity and are exceeding requirements. Stormwater will be treated by approved drip line BMPs. Additional parking will be treated and directed to the vegetated underdrain soil filter. It is within their best interest to handle stormwater onsite and divert what flows to the self-storage units and pipe it out to Broadway.

He showed slides of the overall site with architectural renderings. The front entrance is in view from Broadway. It will be a modern building built to the latest standards.

Russ Lunt, Brigham St., thinks it's an absolute wonderful addition and a nice looking building.

L. Boudreau wished for actual site plans. She felt there's a lot going on and you don't see it on the screen. When you look at site plans, the area between existing building and to the north of the new building is packed full of parking and dumpsters and propane tanks. She asked them to review the Fire Department review and the response.

W. Savage said to the north of the existing building is impervious that will be redeveloped to add ADA parking.

L. Boudreau clarified by showing the area she referred to.

W. Savage said it does appear that a lot is going on. With a standard drive aisle there is a 24' wide aisle and parking spaces are 18' feet deep. There's a planted island between the new and existing buildings. They do not go under 24' feet in width anywhere at this location. They looked to balance parking with adding basic necessities for the existing building. They kept parking close to the building and proposed entry for new building. The existing building has dumpsters located where they are proposed as well as the propane tank.

It was clarified to the Board where the propane tanks and dumpsters will be located.

W. Savage said that they felt from circulation standpoints, the waste hauler could pull in and back up to offload dumpsters and pull out again. The location where they are placed was tucked out of the way. They also looked at overall snow management so that when the drive aisle is being plowed they did not need to maneuver around dumpsters.

L. Boudreau gave a potential scenario about a waste hauler picking up the trash where cars would be parked and propane tanks on the other side. She also asked about fire truck access in the area but not being able to make it around the building.

W. Savage said that is correct; the building is fully sprinkled but in talks with Fire Chief his request was access on two sides of the building. That was the change to add the additional drive aisle along the building.

T. Haeuser asked for an ownership explanation.

P. Collins said the lot line running diagonally through is a long term lease with Portland Water District (PWD). They have 24 years left and has been in place since the building was built. Towards the top is a shared road; it was industrial condos that a previous developer put in. They maintain the road. Where the building is and new building is proposed is owned by them.

T. Haeuser asked if there are various easements and rights to make it work. **P. Collins** said yes.

L. Boudreau said the fire chief talked about hydrants and the response was that no recent flow data has been collected. She asked about results. **W. Savage** said it is a private hydrant and results will be in soon.

L. Boudreau asked what happens if they're not satisfactory. **W. Savage** said as part of PWD easement, there is a 36" main running through the site. He's not concerned from a capacity standpoint. If there's an issue with the existing hydrant, it will need to be replaced. It could be a condition or condition as part of the building permit.

L. Boudreau asked if it should be a condition.

S. Puleo said the Fire Department review for permitting will ask for data on the flow. Personally, he thinks if it's another thing to keep track of but the Fire Department requires it as part of their analysis. They have had issues similar to this and through a de minimis change have added two more hydrants to the site. The Fire Department will not let it slide. It's up to the Board if they want to add it as a condition but he thinks it will be covered.

W. Laidley said one problem is the gap between the professional language and everyday language. This is an ongoing problem for planning. What is a double-loaded parking stall?

S. Puleo said it's shown; the drive aisle with parking on either side. It is a 24' width drive aisle.

W. Laidley said there are technical terms and he wonders if they should have a Lexicon for the public. There is an ongoing language gap between Planning and public.

T. Haeuser said he is conscious of that and resists talking about the City's MS4. He thinks it is a good point and if they started a glossary he's not sure where it would stop. They can be more aware.

K. Gatti said there has been discussion and planning on the initial Fire Department comments. She sees engineering responses from October 17th and wonders if this has gotten back to the Fire Department and if they've seen the changes.

S. Puleo said after the Board goes through the approval, the Fire Department will get their site plan along with the building code office. They will look at the questions they had initially and verify they've met the answers. Typically there isn't a lot of concern, although in this case there was some about getting on either side of the building. Generally the Fire Department is happier with changes because the building will be sprinkled. Typically if there is no sprinkler, there is more concern about site circulation. They probably haven't seen the changes. The only unanswered question from the Fire Department is the flow rate.

K. Gatti said maybe she's overly concerned but they have concerns about access and there have been changes. What happens if they approve it and the Fire Department says it's not a large enough radius?

S. Puleo said first, if the Fire Department doesn't think they meet radii they will not issue a sign off on the building permit. They will ask the applicant to change it and there will be a de minimis change request. If it's substantial, it will come back to the Board for an amendment. There is another set of two or three levels before they build.

T. Haeuser said an example they witnessed was the meeting with CarMax.

K. Gatti said she would feel comfortable making it a condition that the Fire Chief has the opportunity to have another look. Otherwise it looks good.

L. Dillon agrees with Mr. Laidley and she hopes efforts for education and outreach is in the workshop next month. She asked about Ms. Boudreau's first point—it seems like a lot of activity around the propane tanks with large vehicles and she wants to make sure any conditions necessary for clearance are addressed.

W. Savage said they've met minimum building setbacks. They can look at shifting the tanks further away from the proposed dumpsters. They can add bollards between them so there's no additional concern that the two could come into conflict.

L. Boudreau would be happier with something to reduce conflict. It's a tight corner and in a perfect world, she wouldn't vote to approve it. They don't do many septic tanks and she assumes it's just for this building and Creative Work Systems has their own.

W. Savage said the two have their own septic tanks and there is a septic field behind the proposed building. The proposed building will have a separate leach field.

W. Laidley asked Mr. Haeuser if the bollards could be a de minimis change. **T. Haeuser** said yes.

Board members discussed a condition of approval for emergency vehicle access. Additionally, Staff preferred a condition rather than a de minimis change regarding protection around the dumpsters and propane tanks.

PUBLIC HEARING CLOSED

K. Gatti motioned to approve the waiver request of Section 27-1428 (a) Time limitation to allow for a six-month extension of the approval period, expiring October 24, 2018; motioned to approve the site plan application of 2112 Broadway Associates, LLC, dated August 29, 2017 through October 17, 2017, and drawings dated July 8, 2017, to October 17, 2017, for a 14,000 SF Multi-use Building located at 2112 Broadway as follows:

CONDITIONS

- 1. Planning Board Regulation #5, standard condition of approval, as read by the Acting Chair at the opening of the meeting.**
- 2. Prior to scheduling a pre-construction meeting with the City, 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.**
- 3. 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. 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 Director of Planning and Development.

4. 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 inspector as defined in Section 27-1536 (c)(3)(e) of the South Portland Code of Ordinances, as may be amended.
5. 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 inspector 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, describing any noted deficiencies found during inspection
6. Prior to the issuance of a building permit, the applicant shall provide the Planning and 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.
7. Prior to the issuance of a building permit, the Fire Department will review the changes made by the applicant regarding concerns on the adequacy of access for emergency vehicles on the property. The Fire Chief shall determine that the applicant has made adequate provisions to address those concerns.
8. Prior to the issuance of a building permit, the applicant will address Planning Board concerns regarding the propane tank and dumpsters surrounding the property and make provisions to allow safe vehicular access around those items.

W. Laidley seconded; (6-0) (K. Carr absent).

FINDINGS

L. Boudreau asked about a fence in Item #6. She doesn't see a fence. T. Haeuser said to strike "and fenced."

K. Gatti recommended adding the two new conditions.

W. Laidley motioned to accept the findings with changes as stated. L. Boudreau seconded.

Vote 6-0 (K. Carr absent).

Item #5. PUBLIC HEARING – Zoning Text Amendments and Zoning Map Changes – Proposed Zoning Ordinance Amendments for Retail Marijuana Establishments and Medical Marijuana Caregiver Cultivation Facilities – Citywide – City Of South Portland

The City of South Portland Council has requested Planning Board to consider proposed amendments to Chapter 27 Zoning Ordinance regarding retail marijuana establishments.

Per City Ordinance Section 27-115 (g), the Planning Board will, after the close of the public hearing, make a recommendation to the City Council regarding the proposed amendments.

Legal advertisements providing notice of the October 24th Planning Board public hearing appeared in the *Portland Press Herald* on October 6, 2017 and October 12, 2017. Notice was also posted on the City's website, at City Hall, and at the Public Libraries. In addition, notices were emailed to the Conservation Commission, Planning Board, and City Council.

T. Haeuser welcomed Sally Daggett from Corporation Counsel and introduced the item. The state adopted the Marijuana Legalization Act which legalized four types of retail marijuana establishments, as well as marijuana social clubs. While the last workshop on this item was in the winter, the Council has continued to work on various aspects of local zoning and licensing of marijuana. They have reached a point of compromise on aspects of the zoning. The zoning ordinance amendments have three categories: adding definitions for the new types of marijuana establishments allowed under state law, 2) adding the new types of establishments to the permitted and special exception use lists of different zoning districts in which the facilities are proposed to be allowed, and 3) creating performance standards.

He explained that tonight, the Planning Board is requested to make a recommendation on the proposed zoning amendments. To move forward, the Council has agreed to leave out marijuana social clubs and the idea of home occupation cultivation, which could allow up to a 100 SF canopy.

He began by reviewing the Zoning Table for Marijuana Establishments and Controlled Environment Agriculture. He explained the new non-marijuana item called "Controlled Environment Agriculture" that would enable a mixed-used growing facility or standalone hydroponics facility. This is the idea of agriculture within buildings. It is included here to ensure it's allowed as there is one application to come forward that would likely take advantage of this definition. He noted the four new zones recently adopted by the City as noted on the table. They are not included in the October 2017 draft of the zoning and they will need to come back to pull these zones in.

He explained that part of the performance standard aspect was eliminating the existing medical marijuana dispensary standards and adding them as they are now, under a combined section with recreational. All of the wording is the same for medical but there is new content for recreational.

One performance standard is a separation from sensitive uses. He showed the map that outlined places of worship (requires a 300 ft buffer) and school properties (requires a 1000 ft buffer). The distances could change. Other performance standards include hours of operation, in which generally the policy from most Councilors is that regulations should be the same as for alcohol, a size limitation of 10,000 SF for cultivation for fear that all industrial space will be used up, separation of marijuana stores out of concern from other states where undesirable clusters were occurring, standards to ensure odors from establishments aren't perceptible outside of the building or in an adjoining use, an operation plan for proper disposal such as locking dumpsters, and standards that the sale of edibles would follow the state's rules for food sale. The majority of councilors do not want the ability for drive-through and home delivery, defeating controlled purposes you have established for stores. There is also prohibition of the use of prohibited pesticides. He explained that there are other standards that are not included because Council has decided to let the state regulate them. There were discussions about what is here and what should go to the state, along with debate about things like separation of stores and sensitive uses.

PUBLIC HEARING OPEN

Chris O'Neil, resident of Portland, represents an outfit in Westbrook called Green Harbor Technologies, a medical marijuana caregiver in an 11,000 SF facility. His client has invested resources anticipating a retail marketplace. They currently have a robust business in the medical field and have developed strains through cloning. Seeing their technology was eye-opening for him and striking in that it is a legitimate business. They have participated with Council in workshops and would like to compliment staff, Corporation Counsel, and Councilors for doing what many communities have not done. Moratoria

are good; most communities issued them and have done nothing. South Portland has been thoughtful and could be a leader in the state. He believes the first recommendation is to tell the Council well done. They question the 10,000 SF limit on cultivation facilities—it's a great problem to have to worry if there is enough industrial space but most of the ordinance and state enacted law is to allow the marketplace to decide who survives and doesn't. They are currently at 11,000 SF for a medical facility and anticipate finding space between 60-70,000 SF to grow. They are more concerned about retail and satisfied with the amendment as drafted. Their recommendation is to suggest the Council has done a good job and act upon it.

Russ Lunt, Brigham St., said the state is moving and hopes that makes it easier for municipalities. He thinks they're right about medical marijuana and that part is good.

K. Gatti asked about the difference between Controlled Environment Agriculture (CEA) and a Retail Marijuana Cultivation Facility.

T. Haeuser said growing tomatoes. Vegetables and marijuana can be under the same roof but they're distinct uses. For example, the City is interested in aquaculture, which is separate from marijuana. If they did something in Ferry Village by the water, or something on land too, this would allow it. Right now there isn't the ability. If someone in the City wanted to grow produce as well as marijuana, this would enable them. Urban agriculture is a coming thing and this would allow it.

L. Dillon asked if the size limitation applies only to a cultivation facility and not a CEA. **T. Haeuser** said yes.

S. Daggett said the definition of CEA helps distinguish what the CEA use is. It can include marijuana but each use has to meet all relative standards.

L. Boudreau said that was the first thing that hung her up. While she understands they're looking for this kind of growing facility, she doesn't understand why they tangle it up with marijuana. To her, this is confusing.

S. Daggett said there is a prospective applicant that wants to do a CEA and possibly medical marijuana and that is why this was introduced into it. **T. Haeuser** said it's a use they need—apart from medical marijuana, it's a use to have on their books.

L. Boudreau asked why they have to add marijuana cultivation. It sounds like you have to have tomatoes to have marijuana.

K. Gatti said there's an option to have the marijuana cultivation facility if you just want marijuana.

S. Daggett said if someone wants to grow hydroponic tomatoes, it is a CEA use separate and apart from marijuana cultivation.

K. Gatti asked for the rationale as to why under Section 27-1901 (j), there is only one medical marijuana dispensary allowed in the entire City.

S. Puleo said there's regional distribution that the state provides. **S. Daggett** said with the Medical Marijuana Act, the state divided into healthcare districts and there can only be one medical marijuana dispensary per district. So, there can only be one in Cumberland County. When medical marijuana was approved, there was somewhat of an overreaction and the City wanted to make sure there would only be

one in South Portland. She noted that this text is currently in Chapter 27 and been on the books. Council didn't touch anything related to medical, it's just being relocated.

A. Dowling asked why the Council hasn't reworked some parts of medical marijuana. Reading through current laws, it comes across as puritanical as opposed to what they're allowing for recreational.

S. Daggett said it is two different City Councils. Her impression was that they didn't want to tackle revisiting with so many other issues on their plate. There is also an ancillary issue about medical marijuana caregivers and if they should be regulated because the City is currently only regulating medical marijuana dispensaries. There was some thought that legislature might tighten up medical marijuana caregiver regulations.

T. Haeuser said it's almost guaranteed that the City will go back to it in the future.

M. DeRose asked if this is how it will stay. **S. Daggett** said yes, two separate state statutes. One deals with medical marijuana and hopefully a new one with guidance on adult use marijuana. Legislature had a special session and the House and Senate both approved LD 1650, a result of the Marijuana Legalization Implementation Committee. They are waiting to see if Governor LePage will veto it. If he does, Legislature will have to figure out how they can override and if not, the original enactment from November of 2016 will go into place.

T. Haeuser asked if there are implications for what they adopt if the 2016 enactment goes into place.

S. Daggett said no matter what, Ordinance #8 will need to be revisited. They want a companion order that requires City Council within six months of Ordinance #8 to have the City look at the terms of licensing and zoning ordinances to make sure it works with state law. **T. Haeuser** suggested a recommendation to include to the Council that they don't proceed immediately to go to another Planning Board hearing to add in the four new zones but wait to do it knowing they are coming back in less than a year.

S. Daggett thinks the Council will feel that property owners and potential owners or renters need to know what the rules are. By having these four newly enacted zoning districts, it puts staff and potential applicants into "no man's land."

L. Boudreau said overall she doesn't agree with approving it and all the zones. It seems cavalier. They do infill lots and the minute it comes next to your house is when you come forward. No matter how many times you advertise, it doesn't impact people until it's there at home. Council gets complaints that Planning Board isn't making good decisions, and they try to explain that they're set up for a positive recommendation. She thinks it's going to be worse with marijuana. She recognizes the City approved this with more than the majority but thinks they need to be more cautious. She would not include the residential zones or mixed use zones for agricultural marijuana and move it into other zones as a special exception (SE). They are stuck with retail stores and they'll end up being in neighborhoods. This is still considered a federal violation of the law whether the state passed it or not. As a Planning Board member thinking of what they go through, she doesn't think it's what the public wants. Council isn't getting a lot of feedback but it's because they don't realize that Willard and Meetinghouse Hill can have them approved as a SE. Call it a SE, but when it comes to the Board they are pretty much supposed to approve it. They can add conditions, but the facility will still exist in your neighborhood. She's not going to vote in favor; she thinks they need to be more cautious. Tread lightly and a year from now, see where you're at. Clearly, they put in regulations on dispensaries but they don't have any experience. They haven't had a chance to test anything. She thinks it's far too aggressive allowing this in the City.

A. Dowling said Ms. Boudreau made good points. Looking at feedback received from public, it could be interesting. He's wondering about retail marijuana testing facilities. This strikes him as a fairly low intensity use. If you're going to allow things in residential zoning districts as a SE, the testing strikes him as less intense than the controlled environment. He's thinking about G and G-3 zones. He wouldn't mind having a testing facility in the neighborhood; he can see that going into the Castle at Brickhill and no one would know it's there. He also suspects those are good paying jobs. He asked about the footnote on the bottom of the map and asked who someone interested in building goes to and how they find the best available information.

T. Haeuser said they would be within their rights to put the burden on the applicant to demonstrate they're meeting the standard. Practically, they would probably help. The point is it's not a zoning map but shows where he understands schools and places of worship to be. If he missed one or some kind of childcare center that is standalone, that could qualify and he's not 100% sure he got them all.

A. Dowling asked it would be verified if the applicant said they did an exhaustive search and are sure.
T. Haeuser said they make an effort to verify it.

A. Dowling noted that the Long Creek Youth Center may want to be included on the map as a school property.

K. Gatti asked for a reminder. If they were to recommend this and a facility was permitted by SE, they would come before the Board and what is the standard they look at?

T. Haeuser said the presumption is it's permitted. **S. Daggett** said in Section 27-1405, viewed under law, they are essentially permitted uses provided that the three review criteria are met. They are considered to be allowed uses provided that they meet the three criteria. The difference between SE and a permitted use is there is Planning Board review—a SE use requires site plan review, so there is a public process. It's not ultimately what the Council adopted in Ordinance #8 but the starting draft had a lot more of the uses as SE rather than permitted because there is a public process that way. Policy decisions have been made by the Council and this list is the one they want to proceed with.

T. Haeuser said it is an interesting situation; they would not permit a SE application if its impacts—traffic for example—were above average for that type of use. It could make it difficult because they don't have experience on what is average.

L. Boudreau said in reading it, it's presumed permitted—it compares it to the same use within the same zone. So traffic wouldn't be relevant because the use would have a fixed amount of traffic.

S. Daggett said under site plan review standards, there is a standard to review traffic. That standard would apply to the use. All SE applications require site plan review. Technically there are three standards under the SE standards in Section 27-1405 but there are also all of the site plan review standards.

S. Puleo said it's in Section 27-1426 and there are 17 criteria, such as odor and noise.

W. Laidley spoke about testing. If it is as speculated, a high end process involving well trained people with appropriate machinery, you could subcontract that to a couple labs established in the City. He's not sure how labor intensive that is.

C. O'Neil said they've done research in Colorado and Oregon. Testing facilities exist because testing is a public safety concern. Experience is they are not on every corner—it is a consolidated industry. Testing is

done periodically and not high-traffic. Retail stores tend to be higher frequency traffic. Distance from home is a factor; recreational marijuana tends to be something people hoard—they don't go in daily.

W. Laidley asked if there would be a number of testing facilities depending on the market. **C. O'Neil** said yes, there will be a ratio "x testing for y cultivation." If South Portland attracts 100 grow facilities, testing facilities don't have to be contiguous with grow facilities. They can be anywhere in the state.

A. Dowling asked if Mr. O'Neil foresees if there was to be one or two testing facilities in the state of Maine.

C. O'Neil said he doesn't want to guess, but it is common knowledge that there won't be a need for many. Because of the way in which they do business, they can process testing requests on an eight-hour workday and satisfy requirements of the law.

A. Dowling asked if the size would have to be large if it's a single facility serving all of southern and central Maine and how much space a facility would need.

C. O'Neil said he can't say for sure but it's envisioned to be low impact and on any floor. The way they do business may be an office with four employees. It's really speculation. What's safe to predict is that most people won't even know they're there.

A. Dowling asked if there's anything with size of testing facilities. **T. Haeuser** said no.

L. Boudreau asked if the Council talked about security around facilities.

T. Haeuser said they were there originally; you can see it's still in the medical marijuana. They had copied it but Council chose to let it be regulated by the state.

L. Boudreau said they have undercover police for kids buying alcohol and cigarettes in convenience stores. Here, they leave it open and hope the state addresses it. This community has been active in concern about underage alcohol and smoking.

M. DeRose thinks there is a thriving black market and would rather see it regulated and licensed. At least there is an attempt to control it. It's there now, it's just not regulated. She's been a Lyme disease activist and would like to have Council revisit medical marijuana. If it's legal for one it should be for the other; there shouldn't be a distinction between the two. She thinks this is good policy, you're dealing with something new and there will be questions because there's no experience. She is in favor.

W. Laidley said if you go to the right bar and have the right appearance, someone will give you marijuana.

S. Daggett said state legislature will address security issues. The state addressed the gift and delivery; she's not sure about security but it will get addressed. That's why it's important for Council to revisit once they know what the state has done.

K. Gatti said she is for recommending it but not in favor of having CEA in residential districts. She doesn't think there is a need to have it there and for rationale for CEA in multi-family zones.

T. Haeuser said the only rationale was that knowing Council wants to pursue aquaculture and if it happens it will be Ferry Village, which is the G zone.

M. DeRose likes the idea of keeping it small with a limitation on square footage. She hopes it's young entrepreneurs.

L. Dillon thinks what they see is the result of research and deliberation and listening. They will be revisiting it, and there will be time and room. Right now, there's an opportunity to communicate to the community that they're listening and to the business community that they're a leader. She will vote for a positive recommendation.

PUBLIC HEARING CLOSED

K. Gatti motioned to recommend that the City Council adopt the proposed marijuana zoning amendments as contained in Ordinance #8-17/18. **L. Dillon** seconded; (4-2) (**L. Boudreau** and **A. Dowling** opposed, **K. Carr** absent).

Item #6. Public Comment on Items Not on the Agenda

Russ Lunt, Brigham St., said the projects approved are looking good. CarMax looks good. The new Dunkin Donuts on Main St. has foundation poured. The new hotel by Staples is coming to fruition. It is improving the landscape of South Portland. He told Mr. Dowling he did a good job as Acting Chair.

Item #7. Comments from the Planning Board and Director of Planning & Development

T. Haeuser reminded everyone that there is a second Cottage Road safety group tomorrow morning. Secondly, there is a scheduled Planning Board retreat on 11/28, the second meeting in November. They have the need for a meeting out of order, on 11/21, for another marijuana public hearing to add the four new zones. He asked the Board if they would like three meetings in a row or to try to have a lot of items on 11/21.

The Board discussed and decided to leave the decision up to the Planning Department.

A. Dowling mentioned that Thursday at 6 PM is a Noise Advisory meeting at the Portland Jetport.

Item #8. Adjournment

10:00 PM K. Gatti motioned to adjourn. **W. Laidley** seconded; (6-0) (**K. Carr** absent).

Respectfully submitted,
Dana Bettez
10/26/17

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.