

CITY OF SOUTH PORTLAND

Name of Body:
Minutes for Meeting of:
Meeting Begins:
Meeting Location:

Planning Board
July 11, 2017
7:00 p.m.
Council Chambers, City Hall

MINUTES

Members Present

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

Staff Present

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

Pledge of Allegiance

K. Carr announced that the last vacant position on the Board has been filled. City Clerk Emily Scully swore Mary DeRose in.

Chairperson Carr 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.

K. Carr welcomed the new members to the Board.

Item #1. Approval of the June 13, 2017, Planning Board minutes.

L. Boudreau motioned to approve the June 13, 2017, Planning Board minutes. A. Dowling seconded; (7-0).

Item #2. Consent Calendar

No Items

Item #3. PUBLIC HEARING – Nonconforming Lot of Record Review – Single-Family Residence 128 Anthoine Street – Jevgeniys Jesjunins – FINDINGS

Jevgeniys Jesjunins is requesting a site plan approval to develop a nonconforming residential lot of record. The applicant is proposing to construct a four-bedroom 1,151 SF two-story detached single-family

home located at 128 Anthoine Street. The parcel is 4,750 SF in size with 50 feet of street frontage. Public utilities are available in the Anthoine Street ROW. The site plan shows parking for three vehicles along the southern side of the proposed residence. The property is further identified as Assessor's Map 19, Lot 192C, located within the Residential A District and the Pleasantdale Neighborhood.

Public hearing notices were mailed on June 29, 2017, to 93 property owners within 500 feet and the applicant and sent by email to the Conservation Commission, Planning Board, and the City Council.

T. Haeuser introduced the item and showed the location on the map. He stated that the nonconforming lot of record was known as Lot 58 recorded in the *Plan of Building Lots at Highland Park* subdivision and recorded in the Cumberland County Registry of Deeds on July 28, 1907.

He reviewed drainage plan, noting that there will be a crawl space and it will not have any foundation drain. The crawl space allows for a covered front porch with steps, which the applicant believes will make the home more compatible with abutting properties. To minimize the runoff from the developed lot, the applicant is proposing a stone drip edge to intercept roof runoff around the proposed home, except along the driveway and garage. During more intense storm events, the drip edge will fill an overflow. The proposed grading contours will be constructed to provide positive drain away from the building driveway to the vegetated swales on both sides of the home which will retain the first inch of runoff from the roof area during the first 24-hour period rain event. An additional 60 cubic feet of stormwater runoff can be accommodated by a six-inch depression area and stormwater would then follow existing runoff patterns into the street. No potential nuisances are anticipated.

He reviewed neighborhood compatibility and noted there were not any particular issues identified by the peer review architect or staff. Staff recommendation is for approval. He reviewed the conditions, noting that #8 regarding height is new. This is to ensure focus stays on the fact that there is a height limitation of 28 feet.

T. Haeuser asked Mr. Puleo about condition #7 regarding financial capacity. **S. Puleo** confirmed that it should remain.

Sean Frank, Sebago Technics, showed the plans and explained the orientation of the building and lot. All utilities are available from Anthoine Street. They will have a 10' driveway to a one-car garage. The building itself has a crawl space that raises the building to help with the covered front porch, which is a distinct characteristic of the neighborhood. He explained the hip-roof style. It will be wood siding, white on white, with asphalt shingles and a natural redwood deck. Based on comments, they added shutters to the building and aligned windows with the hip of the porch roof.

He reviewed stormwater. The natural grade is about 4' from one back corner to one front corner. He showed where the swales will be located. He explained that the front corner is the outfall of runoff onto Anthoine because they cannot make a specific connection into the storm drain system. He showed where the drip edges will be located. This is to provide additional storage as the soils are clays. Overflows go into swales. He showed the depression area in the front yard and explained how it stores the first inch of runoff and directs it into Anthoine in bigger events.

He described the crawl space. Brick pavers are proposed for the driveway. There is a utility pole in the front and connections will be underground.

T. Haeuser showed the photo simulations and photos of other homes in the neighborhood.

S. Frank reviewed neighborhood compatibility, stating that there are a lot of two-story homes with front porches and steps to the porches as you move up the hill. Many homes have shutters. He explained that there are more single-story homes further down the hill.

T. Haeuser stated that their architect had a couple comments. **S. Frank** said the recommendations from the architectural peer review were to add shutters and adjust windows to match the change in the roofline.

PUBLIC HEARING OPEN

L. Boudreau read that stormwater may flood the driveway before discharging from property and asked if that still exists.

S. Frank said that was more on the spot grades on the first plan. They added additional spot grades to the grading plan and explained the pitches of the outfall. Other homes pitch directly to the curb line but they cannot, so it pitches to the depressional area. It's the same general design as those homes going up the hill but they intercept in their front yard instead of going straight to the street. There will be standing water in the front yard at times because that is the design associated.

L. Boudreau wants it on record that the property owner understands that there will be water in their front yard and driveway. She's seen people with this problem coming to the City hoping they will alleviate it because of problems such as freezing in the winter. She wants it on the record that this is designed in such a way that there could be standing water on the front lawn and some in the driveway.

S. Frank said only in a precipitation event would he see it in the driveway. After the rain stops, he could see it in the front yard for a while.

L. Boudreau said while the house looks lovely and fits with the neighborhood, she cannot see recording shutters as part of this project. There may be a time when the house gets new siding and she's not sure it's necessary for all of the shutters. Frequently you will see homes that have them on the front but not all the way around the house.

T. Haeuser said it's not specifically in the conditions.

L. Boudreau said no but they go by the drawings and what's stated; the architect recommended them and the applicant agreed to add them. She thinks they've bound the house to shutters.

S. Frank said the original intent was to put shutters on the front. It was carried around the side but they're not on the other two sides.

T. Haeuser said substantive changes to the design would have to come for an amendment. That is the deal with nonconforming lots of record.

L. Boudreau thinks it's up to the Board to leave the shutters as built into the plan or make them optional.

T. Haeuser said they can, but it would take another condition. That can be done.

A. Dowling understands Ms. Boudreau and doesn't disagree but he understands Mr. Haeuser's point. He likes the way it looks with the shutters better than without. He doesn't feel it's onerous to put it in as a condition. Nine of 15 other houses in the photos provided have shutters. He enjoyed the architectural peer review; one remark is that it will be a handsome addition and will fit in well with the neighborhood context. He agrees and thinks it looks like a "South Portland" house.

W. Laidley agrees with Ms. Boudreau. Details like shutters doesn't fit his idea of substantive. He is glad to see the applicant is connecting underground for utilities.

K. Carr was drawn to that item as well.

David Regan, 127 Anthoine St., said it looks like a great house and could go with or without shutters. He asked why it was called out that there was no intent to put drainage in the foundation or basement. The street is noisy with traffic and was paved five years ago, which helped a lot. He was thinking of getting natural gas and the reason he decided not to was because it would require a cut in the road and he thinks it would greatly increase noise for the homes in the area. He is wondering what the cuts and repairs will be like.

S. Frank said there is no actual basement; the point of it is that because there is not a separated stormdrain system within Anthoine, they cannot make a connection. There is no foundation drain because there's no natural basement. They show two cuts in the street, one for sewer and one for water, shown on the site plan. They are required to be 10 feet apart and are three feet wide.

A. Dowling asked if there would be two trenches regardless of whether the phone, electric, and cable were above or below ground. **S. Frank** said yes, electrical is on their side of the street so there's no need to go into the street.

A Dowling said if they asked for a waiver of the underground electric, there are still two cuts in the pavement. **S. Frank** said yes.

D. Regan said it may help in the repaving of the two cuts to take the top up for the entire length, so at least there would be traffic going over just two cuts rather than four.

PUBLIC HEARING CLOSED

L. Boudreau said that was an interesting comment. She asked if it's utility companies that each dig their own line or if it could be a skim off the top.

S. Frank said they can look into it but everything adds up; the more you take from a City street, the more you are charged. **S. Puleo** said that's not true.

S. Frank thinks David Kasik may have mentioned this and it may be close to moratorium. **S. Puleo** said it is just out of moratorium.

T. Haeuser said they haven't done it before but he doesn't think it's unreasonable to create a unified repave.

The Board discussed that this would need to be another condition; **T. Haeuser** read an example of a shutter condition (#9) and said he would work on the tenth condition.

K. Gatti suggested adding language that if the shutters are removed in the future it will not require an amendment for the applicant.

S. Puleo spoke about the cut and repave. A street opening typically has a permit to make the cuts and tie-ins. There's a temporary repair to get the base to settle and there's a final repair a few years later. It is not immediate. They have to grind to do repair work and the question is how much they will benefit from skimming the space in between relative to what's underneath the pavement that is not cut. It will have to

be worked out with the street openings manager. It is more complicated and may require things like a certain depth of grinding and fill. He's not sure it can be covered in a condition.

L. Boudreau motioned to approve the site plan application of Jevgeniys Jesjunins to build a single-family home on a nonconforming lot of record located at 128 Anthoine Street dated May 30, 2017, through July 5, 2017, and drawings dated April 27, 2017, through July 5, 2017, with the following conditions of approval:

1. **Planning Board Regulation #5, standard condition of approval, as read by the Chair at the opening of the meeting.**
2. **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 Facts 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.**
3. **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.**
4. **Prior to the issuance of the certificate of occupancy, the applicant shall provide the Planning & Development Director with evidence satisfactory to the Corporation Counsel that a maintenance plan and drainage maintenance agreement has been accepted by the City of South Portland and will be executed and recorded at the Cumberland County Registry of Deeds (CCRD).**
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. **Prior to the issuing of the building permits, the applicant shall provide to the Planning & Development Director with satisfactory evidence that one of the six methods set forth in Section #3(g)b. of the City's Nonconforming Lot of Record application form relating to applicant's financial capacity is in place.**
8. **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.**
9. **Condition #1 notwithstanding, the installation of shutters as shown on the plan elevation is optional. If the shutters are removed in the future, no amendment to the approval will be necessary.**
10. **The area between the two street utility excavations should be milled so that pavement restoration is unified.**

A. Dowling seconded; (7-0).

FINDINGS

L. Boudreau said #3 states "a paved driveway" but pavers were mentioned. **S. Frank** said it is pavers.

L. Boudreau asked if that is part of the water plan. **S. Frank** said no, the driveway is treated as impervious.

L. Boudreau confirmed with Mr. Frank that it for aesthetics and asked if there will be a problem with pavers versus paved when they inspect. **T. Haeuser** said no.

A. Dowling motioned to accept the findings with the addition of conditions #9 and 10. **W. Laidley** seconded; (7-0).

Item #4. PUBLIC HEARING – Special Exception Accessory Dwelling Unit Review – Moretti – ADU – 22 Henry St. – Gary Moretti – FINDINGS

Mr. Gary Moretti is requesting a special exception approval to create an accessory dwelling unit within his home located at 22 Henry St. The single-family home is 2,136 SF in area and the proposed ADU is 528 SF in area. The ADU represents 25% of the principal living area. The proposed ADU location is an existing "cabin/cottage" with one bedroom, one bathroom, and single-car garage. The proposal to create the ADU is to replace the single-car garage area with a kitchenette and a living room. The applicant shows five parking spaces on the property. The property is further identified as Assessor's Map 1, Lot 204, located within the Residential District A.

Public hearing notices were mailed on June 29, 2017, to 130 property owners within 500 feet of the proposed project and the applicant and were sent via email to the Conservation Commission, Planning Board members, and City Council.

T. Haeuser introduced the item and showed the location on the map. He showed street view and noted it is an image from 2015. He showed an overhead view of the lot and where the structure is located. He questioned this ADU when he saw how the structure was against the property line and everything seemed so tight in that area. Initially he thought it was nonconforming and found out it is a former garage that had a variance from 1985 as a garage. That raised the question of it needing an amended variance from the Board of Appeals because their approval was for a garage, not a dwelling unit. This is one consideration.

Another consideration is that it seems by converting the garage into an ADU, you are now turning it into more of a part of the principal structure and it's not so much of an accessory structure anymore. In that case, you are increasing the nonconformance because the setbacks are greater for principal than for accessory structures. Finally, he is concerned about the tightness of the ADU to the property lines and if it maintains the single-family character from an aesthetic point of view.

Everything else about the proposal is adequate. They have included copies of electrical and building permits because the building has been in the process of being improved until now. The City has given permits for everything but the kitchenette. He reviewed the permits. He has a feeling there is a misunderstanding that the final step of this becoming an ADU is a foregone conclusion. There is a kitchen that does not have a building permit so this is, in a sense, an after the fact approval.

L. Boudreau asked if there are permits for the kitchen—that is what made it an ADU.

T. Haeuser said no. They aren't sure about this and the owners have made some significant investment. There may have been some misunderstanding but if this doesn't meet the requirements for the ADU and needs a variance amendment, he's not sure it's ready for approval. They have given two options. There is an option for denial and that some aspect of improvements be taken out so that it's no longer a dwelling unit. For approval, they could approve with a standard condition of approval and a condition #2 that states, "Prior to obtaining a building permit, the applicant provide evidence that they have obtained an amended variance approval from the Board of Appeals for the setback encroachment as a dwelling unit as opposed to a garage." The third condition is standard and states that the Certificate of Approval for the ADU be recorded in the Cumberland County Registry of Deeds prior to the issuance of the certificate of occupancy.

K. Carr asked if it's irregular to review an application when they haven't received comments from all City departments, especially from the fire department. They spend a lot of time on life safety when reviewing ADUs and he's amazed this is in front of them.

S. Puleo said fire department comments came in yesterday. The typical life safety comments are similar for every ADU.

K. Carr said the Board doesn't have those and he doesn't understand why this is before them.

L. Dillon said in the application procedures for an ADU, they are supposed to have building plans, photographs, or drawings. There are some drawings from 1985 paperwork but she doesn't feel like she has a sense of what's going on beyond what she can see on Google Earth.

L. Boudreau is concerned that it's not appropriately before them. It's an expansion of a nonconforming use. Having a residence up to the neighbor's property line with another structure nearby would hopefully be a fire concern. She's not sure if it's best to hope the applicant would withdraw tonight and do the appropriate background work. The expansion of a nonconforming use is a problem for her. Another factor is that there is a lot of construction in that neighborhood now. The Board is taking heat for construction they have no control over. She recognizes this neighborhood does not look like it used to. People are lawfully removing houses or building around tiny structures because they can on a conforming lot. It doesn't make neighbors happy but the Board has no control over it. She feels it is an affront to residents of that area to allow something she has a problem with. She asks if the applicant wants to withdraw tonight and work more closely with Planning or she would be inclined to motion to deny.

K. Gatti asked for clarification where the ADU would be.

This was shown on the map and it was clarified that the structure to the right is the neighbor's garage.

S. Puleo said it was a garage that was much closer and was torn down. The Board of Appeals allowed for an expansion of the garage with four foot rear and side yard setbacks and that is what exists today.

M. DeRose asked if they got permits for things like electricity but it should actually be a garage.

S. Puleo said the variance says it's a garage. In the space and bulk for this district, it is six foot side and rear yard setbacks. You can locate your detached garage or accessory structure in that footprint and that would be conforming. This is nonconforming because a portion of it is two feet in the side yard/rear yard, permitted by the Board of Appeals, for the garage structure to be 528 SF.

A. Dowling asked if the applicant is here and if he can ask a question to him.

Gary Moretti, 22 Henry St., has lived here for five years. When he purchased the home, there was a cabin with plumbing deeded that had been deeded that way for previous owners as well. He understands this has always been a guest house. The other half is a single-car garage but could not be used as one because there's no way to drive in since half is covered by the house.

He stated that the oral history of the neighborhood says that the home burned down and the garage and cabin was rebuilt as it was. He explained that there has been no creation of a bedroom or bathroom because it has always been there. The only difference is the garage half has been insulated and kitchen cabinets were installed. There is a stove but it is not hooked up because he promised Pat Doucette that he wouldn't. There were no questions until two weeks ago when he found out there was a variance 30 years ago that he has never heard about.

The space is for his elderly parents. When they got ill and he brought them here, it was important for everything to be set up. He thought this space that he owned could be made livable for them or he would have to put them in a nursing home.

He stated that he follows the rules and is an amateur when it comes to planning and construction. They have spent \$75,000 to make the space beautiful; they have cleaned everything up but not changed the footprint. In this neighborhood there are many things constructed that look like apartment buildings but this space is not changing. His neighbors are in favor of this project; he brought their letters of support. He explained that this would be a great use of the space and someday he may be able to rent it to help pay for his taxes and insurance. He said neighbors agree that he should preserve it and do what's always been done there; they have done nothing but make it look and function better.

He explained that he went through permits and they were unopposed. His permit was to convert the other half, which was important for his parents to see when they got here so they would feel independent. If he needs a variance, he is happy to do that. He doesn't care what it takes, but he has to take care of his parents and this space was deeded as something you could do that in. He has photos and submitted plans, but everything was already built.

T. Haeuser asked if they should go through the public hearing portion.

K. Carr said he hopes that no comments so far are to be interpreted as being unsympathetic. However, they are talking about something that will survive in perpetuity and they need to be mindful of what will happen in the future. In his perspective, there are a number of hanging issues and he doesn't see how this body can act because of the lingering issues and questions. He wonders about the deed; nothing gives him any information about a cabin. He thinks they need guidance maybe from Corporation Counsel. Given the proximity to abutting properties, he has no interest in reviewing until they have complete comments from the fire department. His concern is that he doesn't want to waste the time of public who have come to plead in support that they cannot really act on tonight.

K. Gatti agrees; she worries that if they rule she's not sure it will have standing. She thinks it may be a good idea to get an opinion from an attorney. She thinks they need a second opinion.

A. Dowling said he expected to see Ms. Daggett here tonight. He agrees that they need to hear from her. He thanked the applicant and asked if Planning and Development or Code Enforcement told him or suggested that this ADU would go right through or that he wouldn't end up in this situation.

G. Moretti said one thing he was most adamant about was that whatever he needs to do, he needs to be able to do to get his parents here and they need to do it completely. The Code officer said this is what ADUs are for; he's halfway there since a cabin is listed and there's plumbing. He met with Pat Doucette multiple times and she walked him through every step; he understands Ms. Doucette does not work for the City anymore. Everything was fine until he found out two weeks ago about nonconformance. His garage has a fire barrier. He would not have his parents sell their home and move here without absolute confidence in the process. He's not saying anyone guaranteed it but everything was set in place.

A. Dowling asked if anyone raised red flags. **G. Moretti** said not until two weeks ago. He met with Mr. Puleo and Mr. LeConte two times prior. Mr. LeConte had done inspections and had concerns about the stove being there. He said he pledged he would not allow it to be used and it hasn't been plugged in.

A. Dowling asked if Ms. Doucette raised red flags. **G. Moretti** said nobody did. He showed an envelope with Mr. Haeuser's writing and said if he had reservations, Ms. Doucette never told him. **T. Haeuser**

didn't recall. He said this has been a nightmare. He didn't cheat or cut corners; no contractors had any sense of it and the neighbors were happy they were doing it.

L. Boudreau said they could postpone, it can be withdrawn and worked on, or they can deny. They also need to talk with Corporation Counsel. She's willing to postpone pending information and an opinion from Corporation Counsel. If she thinks they're free to go forward, she'd want a full inspection from the fire chief and possibly a site walk. This is a serious issue and needs their full effort.

L. Boudreau motioned to postpone this item to the next regularly scheduled meeting pending information from Corporation Counsel. L. Dillon seconded.

T. Haeuser said the next regularly scheduled meeting is August 8th.

L. Dillon clarified that she found the plans and photos. She thinks this is a complex issue and helping get the procedural parts clear and in line is the primary goal.

K. Carr said where he works there is a framework of statute and policy they need to stay within and are often faced with challenging situations. The way they try to frame things is that they are "trying to get to yes." He is trying to get the applicant to yes but they cannot get there tonight. He wants to ensure that's communicated. He doesn't mean to trivialize the task; that means they need to meet all requirements.

Vote (7-0).

G. Moretti asked what he should do. **K. Carr** said they will talk with Corporation Counsel to figure the issues out.

G. Moretti asked if he needs Counsel. **T. Haeuser** said to wait and see what Ms. Daggett says.

Item #5. Public Comment on Items Not on the Agenda

Members of the audience asked if they will be able to speak about the previous item. **K. Carr** said there will be a Public Hearing on August 8th and that is the next opportunity for that to happen.

Item #6. Comments from the Planning Board and Director of Planning & Development

A. Dowling said to Mr. Moretti that he's sorry they are not able to get to where they want to be. He's sorry that he was lead to believe it would be easier. He sympathizes with his situation.

W. Laidley said he hopes the Board members read the discussion about the West End in the *Press Herald*. He thought it was a good article outlining the issues.

Item #7. Adjournment

8: 40 pm L. Boudreau motioned to adjourn. W. Laidley seconded; (7-0).

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.