

**CITY OF SOUTH PORTLAND**

**Name of Body:** **Planning Board**  
**Minutes for Meeting of:** **November 15, 2016**  
**Meeting Begins:** **7:00 p.m.**  
**Meeting Location:** **Lecture Hall, South  
Portland High School,  
637 Highland Avenue**

**Members Present**

William Laidley, Chairperson  
Linda Boudreau  
Adrian Dowling  
Kevin Carr  
Isaac Misiuk  
Taylor Neff  
Kathleen Phillips

**Staff Present**

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

**MINUTES**

**Pledge of Allegiance**

Chairperson William Laidley 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 11, 2016, Planning Board minutes**

**L. Boudreau motioned to approve the October 11, 2016, Planning Board minutes.**  
**K. Phillips seconded; (7-0).**

Item #2A. Consent Calendar – Amended Site Plan – Armory Redevelopment – 682 Broadway – South Portland Property Holdings, LLC – FINDINGS

South Portland Property Holdings, LLC is requesting an amended site plan approval for five changes to their approved project: 1) Additional roof bracing to be installed to support the parapet of the former Drill Hall; 2) The south elevation was revised to incorporate more of the existing brick façade; 3) A small hanging sign is proposed over the side entrance door on the east elevation; 4) A second monument sign is proposed to be located at the intersection of Broadway and Armory Street; 5) To correct a note on sheet C.3 stating "Existing steps and concrete plaza to remain" to allow the applicant to repair and replace the steps and plaza. The property is further identified as Assessor's Tax Map 19, Lot 158, within the Conditional Armory Zone (CAZ).

**T. Haeuser** introduced the item and gave background information for each change. He explained that the project is far along and some of these could be de minimis changes, but since it's the Armory he thought it should come to the Board. He noted that the Board has a memo from Scott Whitaker of the Arts & Historic Preservation Committee. The proposed changes were brought to the committee and they reviewed and made recommendations. He feels positive about this committee and the memo demonstrates it. He suggested the Board add Condition #3 stating that the applicant will make the revisions articulated in Mr. Whitaker's November 6<sup>th</sup> memo.

**David Latulippe, South Portland Property Holdings**, stated that these are minor changes. They are most excited about the back of the building. Taking off the drill hall, they saw that they can save it. He explained how snow could pile up and how there are structural reasons for the design. He spoke about the signs, explaining how the monument sign would be more of a directional sign.

**W. Laidley** said it looks like there is good progress. **D. Latulippe** added that they are excited about Riverview Martial Arts, it's a nice addition and community asset.

**W. Laidley** asked if there was any public comment. There were no comments.

**A. Dowling** motioned to approve the amended site plan application of South Portland Property Holdings, LLC dated October 12, 2016, through November 8, 2016, for modification to the Armory Redevelopment project located 682 Broadway, with the following conditions:

- 1. Planning Board Regulation #5, standard condition of approval, as read by the Chair at the opening of the meeting.**
- 2. The approval of the amended site plan ~~time~~ shall incorporate the Findings of Fact and all conditions of approval dated November 10, 2015.**
- 3. The applicant will make the revisions articulated in Mr. Whitaker's November 6<sup>th</sup> memo.**

**L. Boudreau** seconded; (7-0).

FINDINGS

**T. Haeuser** suggested crossing off the word "time" in condition #2.

**T. Neff** motioned to accept the findings with “time” removed from Condition #2 and addition of Condition #3. **L. Boudreau** seconded; (7-0).

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**Members Present**

William Laidley, Chairperson  
Linda Boudreau  
Adrian Dowling  
Kevin Carr  
Isaac Misiuk  
Taylor Neff  
Kathleen Phillips

**Staff Present**

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

**MINUTES**

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**Item #3. PUBLIC HEARING – Zoning Text Amendment Request – City of South Portland**

The City of South Portland is requesting a land-use recommendation from the Planning Board to the City Council to consider proposed amendments to the Zoning Ordinance regarding nonconforming residential lots of record, space and bulk standards in the AA and A residential zoning districts, and changes to the Official Zoning Map. These changes may affect the ability to develop lots for single family homes in the AA and A residential zoning districts.

**W. Laidley** read rules and information for the public hearing.

**T. Haeuser** introduced the item. He read the public notice and began with presentation on the screen.

He read the issues being addressed, the basic issue being that in the 1960’s, a new type of zoning that was common for the period was adopted by the City. Tonight, they are talking about nonconforming lots of record and minimum lot sizes. He explained the Thirlmere court case that indicated a problem in existing ordinances. At the same time, they have known about other problems that could be fixed, such as houses being allowed to be so close together or those not coming through Planning Board review. In the Residential AA and A zones, minimum lot sizes were out of character with the lot patterns of older neighborhoods. This created unfairness

between property owners in the same area with the same land where one property was made up of a couple nonconforming lots of record and the other was not.

He reviewed a chronology, beginning with the Thirlmere court case and including past Council and Planning Board meetings. Draft amendments were sent to the City Council and were passed 5-2; he reviewed these in detail. It then came to a Planning Board hearing and at the second Council reading failed 1-6. The decision was to move straight onto a comprehensive approach and bypass a temporary fix.

Councilors generally approved staff recommendations but didn't see why the minimum lot sizes couldn't be tailored to the existing pattern for each neighborhood. This is what was brought forward for the City Council workshop on October 24<sup>th</sup>. With that, there were additional changes for standards that tightened the ability to build on nonconforming lots of record. Based on the workshop, the drafts were made that are being reviewed tonight: Versions A and B.

He reviewed nonconforming lots of record standards, existing and new, that are required to build a single-family home on a nonconforming lot of record. There would be Planning Board review in all cases, neighborhood compatibility standards, no basements in combined sewer areas, minimum 12' separation from all buildings on abutting lots, minimum 35' street frontage except if the Planning Board finds that the average lot width of neighboring developed single-family lots is less than 35' or if the owner does not have abutting land available to increase the frontage to at least 35', no moving lot lines, no building or parking easements, can only be used for single-family detached dwelling, must conform with space and bulk regulations of the zoning district except for minimum lot area, minimum street frontage, and maximum net residential density, must be connected to public sewer, must include a stormwater runoff drainage plan approved by the City's engineer, and must comply with Shoreland Zoning if applicable.

He showed a map of lots containing single-family homes and a table of the ordinance with the zone, maximum units/acre, minimum lot size, and minimum area per family. He showed a table of the actual lot sizes for each neighborhood, showing the neighborhoods, count, mean lot size (SF), median lot size (SF), gross parcel area (acres), and gross residential density per acre. He showed Residential AA – proposed minimum lot sizes, explaining that the Council liked the idea of tailoring minimum lot sizes closely to the patterns in each neighborhood. He reviewed each neighborhood.

He reviewed potential lot splits enabled by reduced minimum lot sizes proposed for the A and AA zones. People have asked how many nonconforming lots are left to build on. They haven't been able to answer this because it would take time and expense to do a GIS project. From 2007 to now, the rate of applications coming forward on nonconforming lots of record have been 12 per year. Adding additional restrictive standards, one would expect the rate to decrease. They aren't sure how many are out there to be built on, but there's a manageable rate in which they come forward. On the other hand, it is easier to look at the minimum lot sizes and to figure out how many lots are out there that are double or more than the proposed minimum lot size for that district in order to understand the maximum **potential** number of new house lots that could be created in the A and AA zones from the proposed minimum lot size reductions. He explained the percentage of Residential AA single-family house lots in the neighborhood that could potentially

be split to create a new house lot. He explained that in Meetinghouse Hill there are two options for proposed minimum lot area: 6,000 or 7,500. The number of lots with the potential to be split in the Meetinghouse Hill neighborhood under Residential A initially seemed high compared with the other neighborhoods. It turned out that this was due to the fact that Meetinghouse Hill is larger than other neighborhoods and the percentage of lots with the potential to be split is not out of line with those of the other Residential A neighborhoods. Version A, or 6,000, is recommended by staff.

He reviewed how the Comprehensive Plan was supported in regard to this issue and reviewed the schedule outlining the soonest potential dates. There will be a City Council Workshop to review the recommendations on November 28<sup>th</sup>, a City Council first reading around December 7<sup>th</sup>, and a second reading on December 19<sup>th</sup>. Amendments could become effective January 9, 2017.

**W. Laidley** explained that this is not the end of the discussion; tonight the Planning Board will make a recommendation to City Council.

#### PUBLIC HEARING OPEN

**Robert Ferrante, 815 Main St.**, asked if a provision can be made that will notify anyone living within 500' of a new building or when a house is placed on a smaller lot. He also asked who holds the Board accountable and makes sure they are following laws.

**W. Laidley** clarified that questions will be collected and answered together.

**T. Haeuser** said he is taking note of the questions. **W. Laidley** said that comments will be forwarded to the Council.

**R. Ferrante** asked again how the Board is not held accountable for not doing their job. He wants the City to uphold the laws. He noted he is hard of hearing.

**T. Haeuser** explained that although it was mentioned that hearing aids are available at the opening of the meeting, he doesn't believe they are available here as they are in City Hall.

**Sally Daggett, Corporation Counsel**, said they are here to talk about the proposed zoning ordinance amendments. Specific questions about a property is not why they are here tonight; that can be brought to planning staff. Version A has a minimum lot size of 6,000 for Meetinghouse Hill and Version B has it as 7,500. There are two versions because at the time the Council saw this, they weren't sure which way to go. They asked for a recommendation on both and once they receive it, they will make a decision.

**Cristos Lianides-Chin, 33 William Street, Portland**, asked if this applies to the G zone as well.

**Steve Marsden, 95 Hillside Ave.**, thought of the O'Neil Street property located behind him when he received the notice. He stated that this property is a big question in their minds.

**W. Laidley** said there will be a committee formed to deal with the O'Neil site.

**Adam Helm, 67 Willard St.**, is an owner of a nonconforming lot and wanted to know if someone from the planning staff can sit down with him and explain the implications this has for him specifically.

**T. Haeuser** said he and Mr. Puleo have had meetings like this. They are happy to sit down with anyone.

**Rod Bowen, 24 Osborne Ave.**, asked what neighborhood is street is located in.

**T. Haeuser** isn't sure. **S. Puleo** said they will work with anyone wondering about specific properties.

**R. Bowen** asked about if there's a website he can find this information on. **T. Haeuser** directed him to the City's planning website.

**Pete Plummer, 8 Ashley Rd.**, lives on a nonconforming lot. He supports Version A; the goal should be to help young families as much as they can. He asked if Meetinghouse Hill could be split into two zoning areas if Version A is not approved. It is currently thought of as two sections, the other he believes is called "Jordan's Heights."

**Ellen Kanner, Mussey St.**, owns a multifamily in the G zone and asked if multi-families on nonconforming double lots will be addressed.

**Joe Frustaci, 8 Rosewood Dr., Cape Elizabeth**, supports Version A but has several concerns. He spoke about the limitation of foundations where there's no separated storm drain system. He encourages adding language to page 4, item 7, "...unless another alternative drainage system can be designed." He would like some criteria and restrictions softened by adding "where practical."

**Joseph Dalton, 83 Summit St.**, owns two nonconforming lots in the G zone. He spoke about the lack of ability to put in a cellar as a burden. He's unsure about the two sections: the nonconforming lot regulation and the A and AA zones. He wonders if this will affect him. If so, in mixed neighborhoods, some consistent architectural plan or presentation is nonexistent and to try to come up with a plan is burdensome for the Planning Board. To prepare a proposal for review is a sizable cost.

**Rich Crowley, 18 Stillman St.**, stands to benefit from the change. He spoke about preponderance of abutters and basing lot size on the size of lots in close proximity.

**Will Cabana, 25 Ivy St., Portland**, said the purpose was to help those whose plans went off track after the court case. Despite the setback, he thinks this is probably a better plan than getting a quick fix. On page 2, subsection d, reads, "minimum of 35' frontage..." Page 12, Section 27-534 Space and bulk regulations, reads a minimum street frontage is 75'. He wonders how this is reconciled when a lot would be conforming but not have 75' of frontage. He thanked staff and the Board for taking a look at the Meetinghouse Hill area. He supports Version A.

**Patricia Myatt, 11 Mardale Ave.,** has multiple lots of 6,000 SF each. If it's changed to 8,000 SF it will be a hardship on her.

**Robert Pralicz, 90 Cash St.,** also has multiple lots of 6,000 SF each and this would be a hardship on him as well. He plans on giving some to family and selling some to help with his retirement.

**Greg Lewis, 153 Mussey St.,** has spoken to the Council and is in favor of smart and fair development. He doesn't think you can tell someone who has a lot for years that their grandchildren can't develop on it. He spoke about skyrocketing housing costs in the City and how developers often don't have a stake in the neighborhood they're building in. He agrees that things should go before Planning Board review. As Council has said, there have been complaints about development being too tight. He thinks that looking at the Comprehensive Plan is a good idea but it is a long term plan; the population of South Portland has not increased much in the last 30-40 years. His recommendation is to grandfather the current owner instead of the lot.

**Laurel Labauve, 330 Preble St.,** applauded the Board for looking at the individual neighborhoods. She asked if the presentation will be available because some people cannot see the bottom of the screen. She also asked if the 12' setback is from the home or an accessory building such as a garage or shed.

**Mark Loring, 5 Woodmoor Rd.,** has built on many of these lots, has dealt with staff, and has never had a problem. He explained how it costs a lot to build houses now and how nonconforming grandfathered lots can be hard to build on. He doesn't think it's necessary to go to Planning Board, but to have a team of staff to review everything instead. He thinks twice about Planning Board; it adds costs and time.

**Curt Jensch, 15 Schooner Rd.,** thanked the Board and staff for the new ordinance language. He's done projects in the City and thinks the ordinance is well written and comprehensive. He urges the Board to recommend Version A and thinks the provision for nonconforming lots to go before Planning Board is good—it ensures that neighborhood concerns will be addressed by an impartial panel and takes burden off City staff.

**Jevgeniys Jesjunins, 128 Anthoine St.,** bought property three years ago as a buildable lot but doesn't think his lot will be buildable if this goes through.

**T. Haeuser** said there have been several comments stemming from a misunderstanding.

**S. Daggett** explained what a nonconforming lot of record is. In the current ordinance, if you have a lot that's described in a deed before October 21, 2007, you have a nonconforming lot. If it doesn't meet lot size or street frontage standards, it's nonconforming. The rule today for a nonconforming lot of record, if you have less than 5,000 SF or less than 50' of street frontage, you go to the Planning Board. If you have greater than or equal to 5,000 SF or less than or equal to 50' street frontage but less than the minimum lot size, then you go to the Code Enforcement officer. If it meets both, it's a conforming lot and you don't have to go through a neighborhood

compatibility review. Under these proposed changes as relates to nonconforming lots, if you don't have either 5,000 SF or 50' frontage in your zoning district you go to the Planning Board, so there is a process and notice. This wasn't happening under the current system; they were just going to Code Enforcement and there was no notice to neighbors. When abutters get notice and come to the Board and learn more, they feel better about what has happened. How this process will change is that all nonconforming lots will go to Planning Board but in A and AA residential zoning districts, some minimum lot sizes are proposed to be changed. Currently, the minimum lot size in AA is 20,000 SF. If you have a lot that's 10,000 SF, you don't have a conforming lot today. She gave an example of a lot in Loveitt's Field of 9,000 SF. In some instances, there will be more review and others less.

**T. Haeuser** thinks people are confusing new minimum lot sizes with the nonconformance provisions. What they are doing tonight is trying to preserve the ability for people with nonconforming lots of record to build on their lots, although with tightened standards. The minimum lot size proposals do not mean that a nonconforming lot has to meet the minimum lot size in order to be built on. They are two sides of a coin, but different.

**J. Jesjunins** asked if he can he file application tomorrow. **T. Haeuser** suggested he make an appointment with him or Mr. Puleo. You can file applications but you can't get an approval.

**J. Dalton**, said that in Version A, reducing lot size requirements in some neighborhoods, the issue or neighborhood compatibility becomes moot for something that is big enough. This could allow someone to build something more easily that didn't fit neighborhood compatibility. If you have something that doesn't go before Planning Board, there is a separate set of problems for Planning Board and Council.

**R. Ferrante** asked Ms. Daggett if he should go to the City Manager or City Council if someone isn't doing their job.

**W. Laidley** said he can go to the Manager or his City Councilor. He could also hire an attorney. This is beyond the realm of what they're talking about tonight.

**Russ Lunt, Brigham St.**, said Mr. Lewis had a good thought about grandfathering. He agrees with Mr. Loring.

**Deborah Deane, 408 Preble St.**, would like everyone to be treated respectfully. She suggested that they grandfather so that everyone with a nonconforming lot prior to a certain date is able to build.

**G. Lewis**, explained that the idea of grandfathering would be that current owners can build and once it's sold and nonconforming, it cannot be developed in the future. In regard to lowering the zones: with the rising cost of real estate, this will cause prices to go up. It seems unfair to choose one part of the City and it may encourage more speculation and rising real estate prices.

PUBLIC HEARING CLOSED

**T. Haeuser** began by answering the public's questions.

In regard to Mr. Ferrante asking about being notified, this would happen if the requirement for all nonconforming lots went to the Planning Board. To ensure the Planning Board is enforcing laws, there is a reconsideration process if it's felt a bad decision was made. There is also an appeal process or speaking with the City Manager or City Councilors.

In regard to Mr. Lianides-Chin, the nonconforming part applies across the City regardless of zone. The minimum lot size is not proposed to apply to the G zone at this point because it is A and AA that were so much larger. G zone minimum lot size is 7,500 SF which is less than 12,500 for A and 20,000 for AA. G didn't have the minimum density requirement that A and AA have, which has been an issue.

In regard to Mr. Marsden, the O'Neil street project will have its own review consideration that could involve alternatives within existing zoning or special zoning.

In regard to Mr. Plummer, Meetinghouse Hill could be further split but it could spark other neighborhoods wanting to split. These neighborhoods are based on those first laid out in the 1980's Comprehensive Plan.

In regard Ms. Kanner, only single-families are being discussed.

Mr. Frustaci's recommendation of adding on limitations of basements could be considered, but he's not sure of the word "alternative." The trouble is that a basement pumping a lot of water when the lot is too small to accommodate it, it will go onto the neighbors unless it can go somewhere else. In regard to softening the 12' separation, planners love language like, "where practical" but it's not definite.

In regard to Mr. Dalton, Planning Board approval would be needed even in the G zone. There are times when applications come before the Board under current zoning for lots less than 5,000 SF where a predominant pattern in the neighborhood hasn't existed. This is a good point, but they still get a better outcome by the Board having input into what's proposed to be built and the residents having a say. Planning Board review is somewhat expensive and time consuming but he doesn't know of a better way to reduce complaints about infill development.

In regard to Mr. Crowley, basing lot size more on the size of lots in closer proximity is an interesting idea and he thinks the staff's original idea a few years ago was along the lines of not having a minimum lot size pinned down but it being based on a formula of the average of single-family house lots in a certain area. There are issues with the findings the minimum lot size now; he doesn't think it's practical or certain enough.

In regard to Mr. Cabana, street frontage is another interesting idea where at first he thought there was confusion over minimum 35' frontage. If you're allowing reduction of minimum lot size to 6,000 SF, does it still make sense to require a 75' street frontage? Many lots have a depth of 100' so 60' might make sense. However, this would increase the potential number of new house lots.

In regard to Ms. Myatt and Mr. Pralicz, the concern of three or four lots of 6,000 SF is a misunderstanding. You are still allowed to build but there are new standards that apply.

In regard to Mr. Lewis, he would like to correct a statement he made in the past about the intent of infill house lots being affordability. This wasn't correct. It's wishful thinking but isn't accurate. The grandfathering owners idea isn't recommended. Property rights are serious rights created when subdivision was created. It was legal back then. He believes the idea of property rights is something that runs with the land and shouldn't be subject to a high degree of local legislative consideration.

In regard to Ms. Labauve, the way the ordinance is written is that the new requirement is a home on a nonconforming lot be at least 12' from any abutting building. It applies to accessory as well as principal buildings. This is because some garages are substantial. Getting a new home on a nonconforming lot that's close to a building will look too close. This is something that the Planning Board and Council could change if they wanted to.

To Mr. Dalton's point about requiring all nonconforming lots to go through Board review and get a neighborhood compatibility review, if we reduce minimum lot sizes to 6,000 SF, that is the same as what they have now. He would hate to see any significant amendments because they would need another Planning Board hearing but it's a point to consider.

In regard to Ms. Deane, he doesn't quite understand the comment about grandfathering everyone out of respect. He thinks they are treating everyone the same.

**W. Laidley** referenced letters from William and Brittany Cabana, 25 Ivy St., Portland, dated October 25, 2016 and Nancy Lombardelli, 18 Danforth Rd. These are available upon request.

**L. Boudreau** said that the questions tonight were very good and were similar to her own questions. About softening the 12' separation: when they have these standards, is there any kind of waiver provision built in as opposed to lessening the standard?

**S. Daggett** said there isn't currently a provision that allows the Board to waive various standards. The problem with waivers is that you need to have some objective criteria or when it's acceptable and not. This doesn't mean it isn't possible but she would want to make sure there are only exceptional cases that the Planning Board would be able to grant a waiver. The 12' separation is the new building and existing principal or structure. It's so a neighbor doesn't feel like the new house is being built on top of the existing property owner.

**T. Haeuser** said they could say the "new principal building" if that would leave the possibility for a garage to be closer.

**S. Puleo** clarified that is if the garage was detached.

**S. Daggett** pointed out that these lots generally aren't big enough to have a detached garage.

**L. Boudreau** said they are making every effort to allow nonconforming lots and to allow for building while maintaining the character of the neighborhood. They don't know the situations they will run into and she was trying to leave an opening. She thinks many of them were shocked when infill happened but they found that in her neighborhood, you will see a lot of infill and most you won't recognize. It is incredible how well this opportunity has worked out to allow young families and new residents to come to the City. They may not consider all lots affordable. When you have infill lots, the infrastructure, everything currently exists on the street. It keeps family in the City and prevents pollution from sprawl over time. She thinks infill development has been good for the City. She's glad they are doing this and it's all in a positive direction.

**I. Misiuk** thinks that this process has been wonderful and making the lot sizes match the neighborhood is long overdue. His concern is that it still doesn't make sense that the proposed minimum lot size still exceeds the size of the majority of the lots within the neighborhoods themselves. He thanked everyone who showed up and Mr. Puleo and Mr. Haeuser.

**T. Neff** asked how they came up with the rounded numbers. They all seem to be consistent but she would like to know how they came about. Generally, there needs to be predictability and fairness in this process. She's in favor of Version A. She likes the neighborhood by neighborhood approach. She has concern about Planning Board review; she thinks it's the right call but is concerned about the cost. She asked about egress easements.

**T. Haeuser** said they prefer not to allow those. **S. Puleo** said there's the street frontage issue.

**S. Daggett** said to develop on a nonconforming lot of record you have to have some street frontage. She doesn't think the City has run across this issue today. She suggests checking if this is an issue in a few years. Parking and building encroachments are an issue.

**T. Haeuser** said amendments say, "no vehicle access" and asks if that cover's it. **T. Neff** thought so.

**T. Haeuser** said the numbers were rounded to roughly five-hundreds.

**T. Neff** said to Mr. Misiuk's point, sometimes it's rounded up and others it's rounded down.

**T. Haeuser** said they rounded up and down.

**L. Boudreau** asked if they're looking for a recommendation or a version. She supports Version A. While it shows a larger number of available or potentially available lots, there are also more houses considered.

**A. Dowling** pointed out that no one spoke in favor of Version B. This carries weight. Grandfathering owners was interesting but he will defer to the director and attorney on that. He felt that these proposals were being sold as a remedy to the housing crisis as not having enough affordable housing. He doesn't think this will be an affordable housing solution. He doesn't want anyone thinking that if they vote in favor tonight, they will lower housing prices. They didn't

have anyone speak in opposition of either. If they want to read the letters, they can email Mr. Puleo. He is in favor of Version A.

**K. Carr** favors Version A. He thanked the audience for questions and comments. He thanked planning staff—this was complicated. He thinks this is a good process.

**K. Phillips** echoes the rest of the Board. Time and effort has gone into this from many departments. She supports Version A.

**I. Misiuk** supports A as well.

**L. Boudreau** motioned that the Planning Board send a recommendation for Version A of the proposed amendments. **T. Neff** seconded; (7-0).

**T. Haeuser** asked if the recommendation included the zoning map. **S. Daggett** clarified that it's incorporated into Version A.

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Item #4. PUBLIC HEARING – Special Exception Request – Island Dog Brewing Tasting Room – 125 John Roberts Road – Mr. James Denz – FINDINGS

Mr. James Denz is requesting a special exception review to create a brewery tasting room and retail shop called Island Dog Brewing Company located at 125 John Roberts Road. The applicant is proposing to create a 4,185 SF brewery on the back side of the building in which he is proposing to dedicate approximately one-third of the space for a tasting room and retail store. A Food Establishment and Alcohol License will be obtained from the City Council to use the space as a tavern. The applicant is not intending to have a kitchen in the facility for meal preparation. The property is further identified as Assessor's 75, Lot 11, located in the Light Industrial District (IL).

Public hearing notices were mailed on October 31, 2016 to the 15 property owners within 500 feet of the proposed project, the applicant, and via email the Conservation Commission, the Planning Board, and City Council.

**T. Haeuser** introduced the item and noted that hours of operation will be 2:00-8:00 p.m. Thursday, Friday, and Saturday and 12:00-6:00 p.m. on Sunday. They do not need proposed Conditions #2 and 3 because the information from the bank is acceptable and they're not building anything new.

**Jim Denz** and **Tim Francis** introduced themselves as the applicant.

PUBLIC HEARING OPEN

PUBLIC HEARING CLOSED

**L. Boudreau** isn't sure the applicant should lock themselves into hours. It may suit the business plan now, but it is located near the mall and closing close to mall hours might not be in the best interest. She recommends something more consistent for extended hours.

**T. Hauser** said they don't have hours in any conditions so they aren't tied. In the findings, they could say, "the tasting room and retail shop is currently planned to be open between..." so that it leaves room.

**L. Boudreau** said that sounds fine.

The Board discussed adding the word "currently" to Finding of Fact #9.

**J. Denz** said those hours are proposed and they appreciate flexibility to change the time.

**W. Laidley** explained that they have bumped into this issue before.

**I. Misiuk** thinks it will be a great addition to the area.

**K. Phillips** asked why they're having a food establishment without a kitchen.

**J. Denz** said they don't have interest in cooking food. He explained that other breweries have food trucks that come.

**A. Dowling** motioned to approve the special exception application of James Denz, September 23, 2016 through November 3, 2016, for a Tasting and Retail Shop located at 125 John W. Roberts Road, with the following conditions:

**1. Planning Board Regulation #5, standard condition of approval, as read by the 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 compensation and/or impact fees as determined by the Planning Board.~~**

**3. ~~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.~~**

**K. Carr** seconded; (7-0).

FINDINGS

**K. Carr** motioned to accept the findings. **K. Phillips** seconded; (7-0).

Item #5. PUBLIC HEARING – Special Exception Accessory Dwelling Unit – Schlegel-ADU – 31 Arlington Road – Ms. Andelena Schlegel – FINDINGS

Ms. Andelena Schlegel is requesting a Special Exception approval to create an Accessory Dwelling Unit (ADU) in her home located at 31 Arlington Road. The applicant proposes to convert the second-floor addition by constructing a full kitchen in the space that exists. The ADU will be accessed from the driveway to a deck on the rear of the home. The ADU can also be accessed via a stairway from the basement to the first floor to the second floor. The proposed ADU will be attached to a 1,953 square foot principal dwelling and will be 656 square feet in size, making the ADU 33.5% of the principal dwelling. All living areas will have CO detectors and hardwired smoke detectors. The property is further identified as Assessor's Map 12A, Lot 41, in Residential District A.

Public hearing notices were mailed on October 31, 2016, to the 95 property owners within 500 feet of the proposed project, the applicant and sent via email to the Conservation Commission, Planning Board, and City Council.

**T. Haeuser** introduced the item. His only concern is that it looks like you come up the stairs to a landing and you can proceed into the ADU or into a bonus room. He asked how separate the bonus room is from the ADU.

#### PUBLIC HEARING OPEN

**William B. Henderson, 31 Arlington Rd.**, said there is a doorway that separates the ADU from the bonus room.

**Lisa Badger, 22 Somerset St.**, would like to know if the ADU will be on the top floor.

**W. Henderson** said it will be on the top floor. The addition is already there and was put on for his parents to live in. He is here tonight because they need a kitchen in the area. Everything that can be seen is the way it will remain with the exception that there is a doorway to create a separate space.

**L. Badger** was concerned about noise. There are issues on the other side of her house with Airbnb.

#### PUBLIC HEARING CLOSED

**I. Misiuk** asked if the door was installed specifically leading into the ADU or blocking off the bonus room.

**W. Henderson** said leading into ADU.

**I. Misiuk** said his concern is the same as the last ADU where they required the applicant to keep the windlock. He asked if the applicant could install a door blocking off the bonus room.

**W. Henderson** said you come to the stairs and there's a door. You come into the bonus room and then into the ADU.

**I. Misiuk** said his concern is that the resident could be anyone at a later date and the bonus room could be considered part of the ADU.

The Board discussed the issue of the bonus room being part of the ADU.

**I. Misiuk** said the issue is if it's considered a shared space, whoever resides in the ADU has access to it and it needs to be included in the square footage of the ADU. He asked if he is understanding this correctly.

**T. Haeuser** said that is correct.

**S. Puleo** isn't sure it's entirely correct. It's up to the property owner to manage the spaces; they have spaces similar to this that have been accepted in the past. It's not as though because they walk through that they have access and it's considered part of the ADU. They've allowed people to pass through rooms to get to the ADU as long as the ADU is defined in the proposal.

**I. Misiuk** referred to the last ADU.

**S. Puleo** referenced the mudroom discussion from the last ADU. If it was a space that could only be accessed by the ADU, it would be considered part of the ADU.

**W. Henderson** said he could put a doorway downstairs. He made sure he met all requirements.

**I. Misiuk** said he's okay with this project.

**L. Boudreau** motioned to approve the special exception application of Ms. Andelena Schlegel dated September 7, 2016, through November 1, 2016, and drawing dated March 30, 2015, for accessory dwelling unit located at 31 Arlington Road as follows:

**1. Planning Board Regulation #5, standard condition of approval, as read by the Chair at the opening of the meeting.**

**2. Prior to issuance of the certificate of occupancy, the applicant shall provide evidence to the Planning and Development Director that the Certificate of Approval for the ADU has been recorded in the Cumberland County Registry of Deeds.**

**A. Dowling** seconded; (7-0).

## FINDINGS

**A. Dowling** motioned to accept the findings. **K. Phillips** seconded; (7-0).

**L. Boudreau** said it seems that they're getting tripped up on entrances to these spaces. She suggests that Corporation Counsel look at the last two instances.

**S. Puleo** said the previous ADU came back for a redesign, maintained the airlock, and added an entrance dedicated for the ADU at the rear of the house.

**I. Misiuk** asked if the fire department had issues.

**S. Puleo** said not at this time. They approved the construction plans and they are in construction now.

**T. Neff** mentioned a past ADU and another problem with ADUs and ownership issues.

**S. Puleo** said they spoke with Mr. McNerny and he deeded the property to himself and his wife and out of the corporation. They removed the stairway and did more construction to maintain single-family characteristics.

Item #6. PUBLIC HEARING – Amended Subdivision Review – Second Amended Subdivision – Clark Pond Parkway – 333 Clark's Pond Parkway – FINDINGS

333 Clark's Pond, LLC is requesting an amended second subdivision to allow the purchase of a portion of remaining Lot 2 of the Clark's Pond Subdivision located at 333 Clark's Pond Parkway. The proposal is to create a third lot within the Clark's Pond Shops shopping plaza. This property is located in the Central and Regional Commercial (CCR) zoning district, allowing property lines to bisect common walls serving two or more buildings, in effect providing a zero-foot setback. The new property boundary will be the common wall with the Eastpoint Christian Church. The applicant's proposal would include the purchase of the former Marshall's retail facility and the existing shops within the westerly portion of the building. The proposal does not include any site disturbance. The property is further identified as Assessor's Map 66, Lot 12, located within the Central and Regional Commercial District (CCR).

Legal advertisements were published in the Portland Press Herald on November 8 and 14, 2016. A public hearing notice was posted at City Hall and mailed on October 31, 2016, to the 21 South Portland property owners within 500 feet of the proposed project and the applicant. The public hearing notice was sent via email to the Conservation Commission, Planning Board, and City Council.

**T. Haeuser** introduced the item. Traffic generation is the same, parking is met and exceeded. The stormwater system isn't changing. They are part of the Long Creek General Permit and are asking for a waiver of basic stormwater permits. They are also asking for a waiver request of granite monuments.

PUBLIC HEARING OPEN

**Shawn Frank, Sebago Technics**, showed the site on a drawing. The main component is fixing the sidewalk, fixing the parking lot, and working on the façade. They are looking at three new points that define a lot line and instead of granite monuments they are proposing pins—granite is wonderful at establishing rights of way but are not appropriate in this situation. He believes this is a good revitalization of the area and a great opportunity.

**Russ Lunt, Brigham St.**, said it's good to revitalize the area.

PUBLIC HEARING CLOSED

**L. Boudreau** said there is no major change to the big picture. She's happy with everything here. Everyone is happy to see the mall be improved. She asked why there is a subdivision now and not when Eastpoint bought their share.

**S. Puleo** said this is a second amended subdivision.

**L. Boudreau** asked how many subdivisions there are.

**S. Frank** said this is originally Lot 2; Eastpoint purchased one piece, 333 is another, and the cinema is another.

**L. Boudreau** asked if someone will someone come back for the cinema.

**Steve Bauman, Compass Commercial Brokers**, said they originally planned for Lots 1 and 2. The current ownership decided not to sell the cinema off. Down the road that may happen. Tomorrow they are paving the area. They will continue the look that the Church is doing so it's a cohesive look. They are also redoing the sidewalks.

**I. Misiuk** thinks this is wonderful and looks forward to seeing new businesses coming to the City.

**S. Bauman** said they never would have moved if the center wasn't bought.

**K. Carr** thinks this is great.

**K. Phillips** thinks it will be a wonderful improvement. She supports this.

**T. Neff** motioned to approve the waiver request of Section 27-1536 (H) (2) to allow a waiver of basic stormwater management plan requirements, per Section 27-1536 (d), because the property owner is participating in the Long Creek Watershed Management General Permit Program;

to approve the waiver request of Section 27-1426 (I) Granite monuments to allow the use of steel rebar to identify the property boundaries;

to approve the minor subdivision of 333 Clark's Pond, LLC dated September 20, 2016, through November 8, 2016, and drawings dated August 19, 2016, for Lot 2: Clark's Pond Subdivision located at 333 Clark's Pond Parkway, with the following conditions:

1. Prior to the release of the signed 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, as read by the Chair at the opening of the meeting.

3. The property is subject to an "Amended Reciprocal Easement and Maintenance Agreement ("Agreement") and an Amended Long Creek Watershed Participating Landowner Agreement (PLA). The applicant shall provide a copy of the duly executed and recorded "Agreement" at the Cumberland County Registry of Deeds and the executed PLA contemporaneously to the Planning & Development Director.

**I. Misiuk seconded; (7-0).**

FINDINGS

**I. Misiuk motioned to accept the findings. K. Phillips seconded; (7-0).**

Item #7. Public Comment on Items Not on the Agenda

None

Item #8. Comments from the Planning Board and Director of Planning & Development

**T. Neff nominated Ms. Boudreau for the O’Neil Street committee. I. Misiuk seconded.**

**W. Laidley** agreed. Meetinghouse Hill can benefit from this.

**L. Boudreau** is hoping for lots of input and consultants giving ideas.

**S. Puleo** will send her the concept plans.

**Vote 7-0.**

The Board discussed acreage.

**I. Misiuk** mentioned that the Affordable Housing Committee will go before City Council on November 28<sup>th</sup> for the second time.

Item #9. Adjournment

**10:30 p.m. K. Phillips motioned to adjourn. T. Neff seconded; (7-0).**

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**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.