

## CITY OF SOUTH PORTLAND

<b>Name of Body:</b>	<b>Planning Board</b>
<b>Minutes for Meeting of:</b>	<b>May 9, 2017</b>
<b>Meeting Begins:</b>	<b>7:00 p.m.</b>
<b>Meeting Location:</b>	<b>Council Chambers, City Hall</b>
<b>Amended Agenda Issued:</b>	<b>Monday May 8, 2017 8:25 AM</b>

### MINUTES

#### Members Present

Kevin Carr, Chairperson  
Linda Boudreau  
Taylor Neff  
Adrian Dowling  
Kathleen Phillips

#### Staff Present

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

#### Absent

William Laidley  
District 3 vacant

#### Pledge of Allegiance

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.

Item #1. Approval of the April 4 and April 11, 2017, Planning Board minutes.

**L. Boudreau motioned to approve the April 4 and 11, 2017, Planning Board minutes.**

**K. Phillips seconded; (5-0) (W. Laidley absent, District 3 vacant).**

**K. Carr** announced that the Board will now move to Item #6.

Item #6. PUBLIC HEARING – Zoning Text Amendment – Proposed Zoning Ordinance Amendments for Retail Marijuana Establishments and Medical Marijuana Caregiver Cultivation Facilities

This item will be postponed until June 13, 2017, in order to have the benefit of City Council guidance from their workshop scheduled for May 22<sup>nd</sup>.

**K. Phillips** motioned to postpone the Zoning Text Amendment – Proposed Zoning Ordinance Amendments for Retail Marijuana Establishments and Medical Marijuana Caregiver Cultivation Facilities public hearing to the June 13, 2017, meeting. **A. Dowling** seconded; (5-0) (W. Laidley absent, District 3 vacant).

Item #2A. Consent Calendar. Site Plan Review – Proposed Hotel Development – 50 Maine Mall Rd – New Gen Ventures, LLC – FINDINGS

New Gen Ventures, LLC is requesting an amended site plan approval to make several proposed changes to the approved four-story 111-room hotel located at 50 Maine Mall Road. The applicant is proposing four modifications: 1) Modifications to the underground utility service location for the site to be routed from Western Avenue; 2) The relocation of the roof top mechanical equipment to the ground; 3) The basement elevation will be lower to allow additional clearance for installing some mechanical equipment in the basement; and 4) Increasing the Western Avenue front yard set back from 50 feet to 30 feet, addressing the change in the Western Avenue Rights-of-Way (ROW) as a result of the Department of Transportation's (DOT) improvements. The property is further identified as Assessor's Tax Map 48, Lot 10, located in the Central and Regional Commercial District (CCR).

This submission will be reviewed under Chapter 27, Article XIV Site Plan Review, and in compliance with Article VII Central and Regional Commercial District (CCR).

**T. Haeuser** introduced the item and showed the location on the map. Changes add up to more than appropriate for staff approval through a de minimis change. This is an intermediate route and going through the consent calendar does not require a public hearing. Staff recommendation is for approval. He reviewed the conditions.

**A. Dowling** said the packet has four conditions of approval but some of the backup materials mention adding sixth or seventh. He's wondering about the difference.

**S. Puleo** said it's actually only two conditions that they need to make the amendment work: the reciprocal agreement and the certification of the noise report. The other two are the standard condition of approval and to include the previous findings.

**T. Neff** motioned to approve the amended site plan application of New Gen Ventures, LLC, dated November 8, 2016, through January 3, 2017, and drawings dated May 17, 2016, through April 4, 2017, for modification to the Proposed Hotel Development located at 50 Maine Mall 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. **Within 14 days of the approval of the site plan amendment, the reciprocal easement agreement between 2 Meadowood, LLC and New Gen Ventures, LLC referenced on the site plan must take place, the deed must be recorded in the Cumberland County Registry of Deeds and evidence of such recording must be submitted to the Planning and Development Director.**

3. **The applicant shall provide a regiment compliance report prior to scheduling and occupancy certificate inspection per Section 30-6(c)(2), and on an annual basis, on or before July 15th, reporting sound measurement data to the Planning and Development Director**
  4. **The approval of the amended site plan shall incorporate the Findings of Fact and all conditions of approval dated August 9, 2016.**
- A. Dowling seconded; (5-0) (W. Laidley absent, District 3 vacant).**

**S. Puleo** said the findings will be signed at the next meeting. **L. Boudreau** asked if it will impact the work they're doing. **S. Puleo** said it will not.

Item #3. PUBLIC HEARING – Non-Conforming Lot of Record Development Request – Single-family Residence – 5 Schooner Road (formerly 736 Sawyer Street) – Catherine Menyhart and Curt Jensch – FINDINGS

Catherine Menyhart and Curt Jensch are requesting a review and approval to develop single-family residence on a non-conforming lot of record located at 5 Schooner Road (formerly 736 Sawyer Street). The applicants are proposing to construct a single-family residence on a non-conforming lot of record located at 5 Schooner Road (formerly known as 736 Sawyer Street). The parcel is 4,539 SF and located in the Ocean Street neighborhood. The Ocean Street neighborhood has a minimum lot size of 8,000 SF. The parcel was recorded in 1925 and found in the South Portland Estates subdivision plan. The applicants are proposing to construct a 866 SF footprint of a single-family house with a workshop area. The design shows two curb cuts: one from Sawyer Street and one from Schooner Road as the primary driveway access. Both driveway areas will use porous paving block for a surface. The property is further identified is Assessor's Map 21, Lot 7, located within the Residential A District and in neighborhood Ocean Street.

Public hearing notices were mailed on May 1, 2017, to 120 property owners within 500 feet of the property and the applicants and were sent by email to the Conservation Commission, Planning Board, and the City Council.

This site plan submission will be reviewed under Chapter 27, Article III. Nonconformance, Article XVIII Site Plan Review, and in compliance with Article V. Residential District A.

**T. Haeuser** introduced the item and showed the location on the map and the vacant parcel. He thinks this application is a model for how these should be done. They have the various sign offs from the different service agencies. Stormwater is handled in different ways: they are proposing to build on slab, so there's no foundation drain or sump pump. They will use "Grasscrete" porous grass pavers to reduce the site's total impervious surface. A small area of the landscaped area and the parking will sheet flow into the City's separated storm drain system within the Sawyer Street ROW. The applicants are proposing to install a culvert under the driveway from Schooner Road to convey runoff from the upper part site. The property owner of 15 Schooner Road, abutting the site, has provided a draft drainage easement to allow stormwater to sheet flow to the existing drain and culvert system within the Schooner Road gutter line. The applicants agree to maintain the drainage swales by providing an "As-Built drawing" of the site prior to scheduling a

Certificate of Occupancy inspection. The Water Resource Protection Director has provided an acceptance letter for the small additional stormwater runoff in the separated storm drain system. He described the proposed landscaping. There are no nuisances anticipated and legal, technical, and financial capacity is shown. The applicants have done the neighborhood compatibility architectural review; both sides agree the different standards are consistent with patterns of the neighborhood. Their architect said many residences present shutters and these elevations are well proportioned that such a feature is not necessary. He explained that one reason this is a model is because of the neighborhood comparison analysis table that the applicant provided. Staff recommendation is for approval. He reviewed the conditions.

**Curt Jensch, 15 Schooner Road**, introduced himself and his wife Catherine. He owns a small design build residential firm; the focus of his work is small, energy-efficient customers and residential homes. Their project was on hold while the City went through the review process for the ordinance language, which they think is important and was well done. This project is directly adjacent to his home. Five years ago, he convinced his father to retire to Maine and they have looked for a good location for him to live in. This is why they are doing this project and they are excited at the prospect of being neighbors. They've paid attention to the character of the neighborhood because they live there; they share the same concerns that their neighbors do.

He showed a presentation, first showing the plan and orientation. The address was updated to 5 Schooner Road because they proposed the primary access be a one-car driveway off of that road. A secondary driveway off Sawyer is to meet the parking requirements. The house is a single-family with 1.5 stories, 1150 SF. They are attached via an open deck to an accessory building—a workshop to paint in. There are two covered entry porches. The site has much vegetation. They are proposing to keep the line of spruce trees as a buffer for the Schooner Road side and will add native plantings and a tree on the other side. Topography starts out level with Sawyer and has a sloping grade toward their lot.

Walsh Engineering worked on stormwater. The strategy was to minimize impervious and preserve existing drainage ways. There is a cone-shaped mini watershed and he showed how it flows. The system works well, it was put in when they built their home 11 years ago. An example of minimization of impervious is keeping the house to a small footprint. The second is permeable pavers for both driveway surfaces. The third element is by maintaining the current vegetation. The second approach is for what stormwater is generated, to preserve the existing catchment system. The ordinance provides for an easement option; one of the best ways to deal with stormwater and to minimize impact is to create an easement area that attached to the natural drainage patterns and this is what they propose. He explained the grading plan.

He explained the design criteria, all of which they met. He also reviewed the Demonstration of Predominate Patterns of Development, showing that it met all criteria there as well. As for the neighborhood character analysis, the neighborhood is mixed and that is the pattern. Within it they looked at sub-patterns—distance from street, house width to street, roof orientation.

**T. Haeuser** asked for a color. **C. Jensch** said medium-gray. Overall they believe it will fit with the neighborhood and hopes it provides a good example of a well-designed project that fits in seamlessly.

#### PUBLIC HEARING OPEN

**Russ Lunt, Brigham St.**, said it was a wonderful presentation. He asked if Schooner Road is accepted. **S. Puleo** said it's a private way.

**Ken Graffam, 746 Sawyer St.**, is the owner and seller of the property. He said the applicants are first-rate people; he has known them for a long time and he supports the project. His concern is the drainage that comes down the lot. They have a serious slope in the land and Mr. Jensch did a good job explaining it. His concern is that water will accumulate on his property and another lot. He assumes the engineers have looked at it and wants the City to be on record saying they have done so and his fears are not well-founded.

**T. Haeuser** said that this project has been reviewed by the consulting engineering firms.

**S. Puleo** said their engineering firm has reviewed this. As a part of the review, they look at pre- and post-construction sub catchment drainage areas. Both reports show a portion of water that currently discharges from Mr. Graffam's property across this lot that ends up going along the drainage easement area and eventually into the Schooner Road gutter line. Not only does it take care of the water from this development but also picks up some sheet flow from Mr. Graffam. It should not add any additional problems; if anything it will continue to function the same as it does today. It should be able to accommodate any stormwater generated by sheet flow activity. Engineers have reviewed and approved and Water Resource didn't see any issues.

**T. Haeuser** asked if the applicant is doing anything on the property line to interfere with the flow.

**C. Jensch** said no, there will be nothing along that side to interfere. The engineering analysis was done to take on some of the water that comes from Mr. Graffam's additional property and that comes across the drainage easement they've proposed to deed as part of this project. In a sense, it treats more water than what is on the lot and treats some neighbor's as well.

**L. Boudreau** said she's not sure about utilities. They are within the combined system, but condition #4 says otherwise.

**S. Puleo** said there are two but they've reoriented to Schooner Road which is a combined system. There is a small portion that drains into the City's separated system on Sawyer Street. The majority goes into the combined system but a small part goes into the separated system.

**L. Boudreau** asked if one is incorrect. **S. Puleo** said it's on both systems, two separate roads. Schooner is combined, Sawyer is separate. **L. Boudreau** said it's written incorrectly and Mr. Puleo noted this.

**A. Dowling** said on page 4, Tab 1, in the architectural peer review, section 6 mentions stained wood shingles. Elsewhere is vinyl siding and he asked which it is.

**C. Jensch** said the plan is wood shingles. If there is something related to vinyl siding, it is a misprint. He thought it was corrected. **S. Puleo** said it's corrected in the findings.

**A. Dowling** said in Tab 2, page 2, near the bottom in the applicant's response, says that the permeable pavers were elective and they do not anticipate a drainage maintenance agreement being required. The City wants one. Is there conflict?

**S. Puleo** said as with the last three non-conforming lot of record approvals, the Planning Board seemed clear that they wanted the agreement. Based on that, he explained this to the applicant. It's something the Board has the discretion on. He thinks going forward, it seems with these lots, which are tight and dependent on the grading plan as part of the drainage plan, it's important that the applicant is required to enter the agreement.

**A. Dowling** said on the last page of that tab, exhibit 1, he has a blank page. Is there a plan or is this a placeholder? **S. Puleo** said it's a placeholder and will be provided in time.

**A. Dowling** said he likes the look of it and especially the digital renderings in contrast to the renderings from the last few applications. These gave a better idea of how the proposed building relates to the neighborhood. He thinks this makes it easier for the neighborhood to see what it will look like.

**K. Phillips** asked about the purchase and sale. It makes reference for the purchase and sale agreement to close on or before August 30, 2016, and there's an amendment to the agreement stating that it will occur on or before December 31, 2016. Is there a second amendment?

**C. Jensch** said there is one and it was included in the original submission. This extends through May 31, 2017. The reason for those extensions were generally because of the ongoing work of the ordinance agreement. Mr. Graffam has kindly agreed to extend.

**S. Puleo** showed this to Kathy.

**L. Boudreau** likes that Mr. Dowling drew attention to the pavers. She would hate for someone to go in and pave it. She thinks it's important to note they are part of the plan and this property will always have permeable pavers.

**T. Haeuser** asked if it's covered in stormwater maintenance. **S. Puleo** said he hasn't seen the maintenance plan, but if it includes the pavers it's part of the agreement. Whatever the stormwater management plan shows will be part of the drainage plan and not able to change. If they want it to go further, they could amend the agreement to ensure it includes the pavers in the stormwater management agreement specifically.

**L. Boudreau** thinks it's a critical area and they need to be sure they've covered their bases.

**T. Haeuser** stated that they could add a clause to #6 including the porous grass pavers. **S. Puleo** said they will do that. He asked if the applicant finds that the grass pavers don't work as intended, would some other porous paver work?

**T. Haeuser** suggested removing the word "grass." **K. Carr** said his concern is getting too specific. He can anticipate a scenario where there is a different product that is better. Perhaps something that says "porous pavers."

**L. Boudreau** said this house will look more like the house on Schooner, not like those on Sawyer. While they like the architecture, they don't want those on Sawyer to realize it's a more contemporary look. The long narrow window gives it a more contemporary style. She's not opposed but it's a difficult situation with two street frontages. It works better on Schooner than on Sawyer.

**S. Puleo** said the rendering doesn't show the proposed planting on Sawyer—an evergreen fir. That may soften her concern.

**T. Haeuser** asked Mr. Jensch to address this.

**C. Jensch** said the architecture is a mix of styles. He's sympathetic that the window is more modern feeling but they want to be honest that the house is newer construction. It is a gabled, cape-style roof. This view facing Sawyer is busier and they designed it to meet stringent energy criteria and that is a west/northwest facing side. Looking at energy modeling, they were constrained somewhat as to how much glazing they can put on that side. They think it will fit nicely and look like it blends in.

**K. Carr** doesn't see it significantly incompatible with the ranch across the street.

PUBLIC HEARING CLOSED

**A. Dowling** motioned to approve the site plan application of Catherine Menyhart and Curt Jensch to build a single-family home on a nonconforming lot of record, located at 5 Schooner Road (formerly 736 Sawyer Street), dated March 24, 2017, through May 2, 2017, and drawings dated March 24, 2017, through May 1, 2017, with the following conditions of approval:

**CONDITIONS**

- 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 applicants 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.**
- 3. Prior to issuing the certificate of occupancy, the applicants 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 applicants shall provide the Planning & Development Director with evidence satisfactory to the Corporation Counsel that a maintenance plan and drainage maintenance agreement have 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 applicants 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 applicants 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. The Stormwater Management Maintenance Plan will include porous pavers or material with equivalent performance.
- L. Boudreau seconded; (5-0) (W. Laidley absent, District 3 vacant).

#### FINDINGS

K. Carr asked for date confirmations.

S. Puleo said March 24, 2017, through May 2, 2017, and drawings dated March 24, 2017, through May 1, 2017.

K. Phillips asked if in paragraph 3, where it mentions permeable grass pavers, should “or equivalent” be added? S. Puleo said yes.

T. Neff motioned to accept the findings with the dates changed to “March 24, 2017, through May 2, 2017, and drawings dated March 24, 2017, through May 1, 2017” in the decision and “or equivalent” added to the end of “permeable grass pavers” in paragraph 3.

A. Dowling seconded.

Vote (5-0) (W. Laidley absent, District 3 vacant).

#### Item #4. PUBLIC HEARING – Site Plan Review – Office and Workshop – 190 Sawyer Street – Danforth S. Desna – FINDINGS

Danforth DeSena is requesting a site plan approval to construct professional office building with an assessor medical device workshop, located at 190 Sawyer Street. The applicant is proposing a 2,043 SF structure in which 1,102 SF will be used as office space and 941 SF as a workshop area and storage. The structure is designed to have a similar façade to the single-family home in the area. The site will include four parking spaces for employees in which one will be ADA complaint. The site has an existing 12-foot wide curb cut that will be used by the development. The office will be open Monday through Friday, 8:00 AM to 5:00 PM, and will usually have one full-time and one part-time employee present. Customers will arrive by appointment to visit the business. Stormwater treatment will be handled by a rain garden with an under drain

connection to the City's MS4. The applicant is proposing a four-foot tall shrub buffer to protect the abutting property from the parking area. The property is further identified in mention is Assessor's Map 9, Lot 320, located within the Residential G District.

Public hearing notices were mailed on May 1, 2017, to the 102 property owners within 500 feet of the proposed project, the applicant, the Conservation Commission, Planning Board, and City Council.

This site plan submission will be reviewed under Chapter 27, Article XIV Site Plan Review and in compliance with Article V. Residential G District.

**T. Haeuser** introduced the item and showed the location on a map. This is in the G zone, which allows offices. It will look like a residential home but be used as an office and workshop. There is a request for a waiver so that utility lines can be installed overhead. It is site plan and they are working within the requirements of a basic stormwater management plan. They will use a bio retention area located in the northwest corner of the property adjacent to the Sawyer Street ROW. He reviewed landscaping. There is also a waiver request for time limitations.

**S. Puleo** said the Time Limitations waiver does not belong but there is a waiver for underground utilities.

**T. Haeuser** reviewed the conditions of approval.

**Jim Fisher, Northeast Civil Solutions**, introduced himself and James Davis, the project engineer. He stated that this is relatively simple; it's essentially a house in the G zone to be used as an office, to fit in with the immediate neighborhood, and the workshop is set up to be a garage. The ground floor will be administrative. Reo Marine is across the street. Mr. DeSena is an entrepreneur and medical device inventor and improver looking for more space. He showed the plans on the board and explained the orientation. He explained that everything is public utility in this area. The impervious area created will be the driveway and parking area and will direct stormwater to the front left-hand corner, where the bio cell is, which leads to the separated system. The layout is as close to perfect as it can be for stormwater.

#### PUBLIC HEARING OPEN

**Amy McLaughlin, 204 Sawyer Street**, lives next door. She would like a privacy fence added to keep car headlights from her windows and with the nature of Dr. DeSena's work, she wants to be sure the workshop won't have any radiation.

**Charles Hamlin, School St.**, thinks this is a great idea to fill the lot since it's been vacant. He believes it will fit in with the neighborhood. He has talked with the applicant and they are receptive to taking care of the water. He thinks it's a great plan.

**Russ Lunt, Brigham St.**, agrees with Mr. Hamlin and thinks it's a wonderful use. It's been vacant and is a good piece of land.

**A. McLaughlin** printed papers out about Mr. DeSena's work to the Board.

**J. Fisher** said they will add a four-foot fence in addition to the bushes. They can go higher if needed. **A. McLaughlin** asked for a six-foot fence and asked what their plan is in regard to the gradient.

**J. Fisher** said for drainage, it will be slightly lower where the bushes are planted. They can do four or six-feet. The parking spaces will be lower than the adjacent property. A four-foot fence would act more like a taller fence. Aesthetically, he thinks four-foot is good.

**Dr. Danforth DeSena, 4 Ivie Road, Cape Elizabeth**, said he is amenable to working on the height of the fence between the parking area and neighbor. If it is high, it may not be to her best interest. He explained that he is an inventor and retired podiatrist who develops x-ray marking devices as a hobby. They test products for quality control using an x-ray machine. As far as a hazard to neighbors or employees, it's not a concern as it is an industrial cabinet-type of machine, fully enclosed and shielded so operator doesn't need to leave the area. It's inspected every two years and used approximately once a week for 15-20 minutes. There is no radiation to be concerned with.

**L. Boudreau** said page 1, the minimum landscaped open space required is 33% but 19% is proposed. **S. Puleo** said the footprint is 19% of the lot, the rest is open space.

**L. Boudreau** knows the property and thinks it's a great lot. It's a good situation and a separated storm system. It is forward-looking and can easily be converted. She is pleased to see a business going in that pays attention to the aesthetics of the neighborhood.

**A. Dowling** asked Mr. Haeuser to look at the street view for the nearest utility pole. **T. Haeuser** showed it as across the street.

**A. Dowling** asked if there's technology where they can do underground utilities without cutting pavement when there is a pole across the street.

**S. Puleo** said it's more than cost; there are lots of utilities in the road at different elevations. To thread the needle run the risk of clipping something. They excavate to find the utilities to know where to snake. **J. Fisher** agreed.

**A. Dowling** said his pet peeve is underground utility waivers and a few recent applicants have withdrawn their requests. **S. Puleo** reminded him that the pole was adjacent to the site.

The Board discussed underground utility waivers and situations.

PUBLIC HEARING CLOSED

**L. Boudreau** motioned to approve the waiver of Section 24-38 (F)(1) requiring underground utilities;

to approve the site plan application of Danforth S. DeSena dated March 27, 2017, through May 2, 2017 and drawings dated March 24, 2017, through May 2, 2017; for Office and Workshop located at 190 Sawyer Street as follows:

**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 pay all compensation and/or impact fees as determined by the Planning Board.**
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 third party inspector as defined in Section 27-1536 (c)(3)(e) of the South Portland Code of Ordinances, as may be amended.**
5. **Prior to the issuance of any sign permit, the applicant shall provide the Director of Planning and Development with details of the location, size, and materials pursuant to Section 27-1561 of the South Portland Code of Ordinances, as may be amended.**
6. **Revise the site plan to show a six-foot fence between the property and 204 Sawyer Street.**

**K. Carr** asked if the privacy fence should be added as a condition.

The Board discussed how to proceed and decided to include it in the conditions.

**T. Neff** seconded; (5-0) (W. Laidley absent, District 3 vacant).

**FINDINGS**

**T. Neff** motioned to accept the findings as amended. **K. Phillips** seconded; (5-0) (W. Laidley absent, District 3 vacant).

Item #5. PUBLIC HEARING – Zoning Text Amendments – Inclusionary Zoning and a Housing Trust Fund – City of South Portland

The City of South Portland Planning Staff is requesting the Planning Board to consider proposed amendments to the Zoning Ordinance regarding text amendments for an Inclusionary Zoning ordinance and a Housing Trust Fund.

Per 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.

**T. Hauser** introduced the item. He explained that this is the second part of a package; the first was the revision and extension of the Suburban Commercial zone in the Maine Mall area. The Board had a hearing and the Council has now adopted the first part. Staff intention was to combine a Portland-style inclusionary zoning requirement to enable the addition of a substantial number of new housing units in the West End. This would mean that there would be mixed-income aspects to the new developments. The Board had a workshop on April 25<sup>th</sup> and tonight they are resuming the public hearing.

Discussions at the workshop were about changes to the ordinance text and the guidelines, or regulations, that come after. One ordinance revision discussed was about the requirement that 10% of a qualifying development's bedrooms be provided in the Middle-Income Units (MIUs). Portland takes the total square footage and divides by 400 SF, saying there should be a bedroom for every 400 SF. There was discussion that it doesn't seem realistic and that the first bedroom is associated with a larger area (a kitchen, bathroom, etc.), so subsequent bedrooms are associated with that area as well. This proposal is to take off the first 800 SF and then divide by 400. An alternative would be to eliminate the second sentence altogether and leave the explanation of the calculation to the Planning Board regulations. The other revision would be to reduce the amount of the fee in lieu of providing an MIU. Portland has a figure of \$100,000, which may not make sense for this market, and it may be reasonable to revise the in-lieu fee for South Portland to \$75,000. He noted that any substantial change to the proposed ordinance will require a fresh Planning Board public hearing with new public notice.

He then reviewed the revisions to the Planning Board regulations and procedures. If the Inclusionary Zoning ordinance is adopted, staff will bring forward to the Planning Board a set of regulations similar to the guidelines in use by Portland. Board members discussed the regulations at the April 25<sup>th</sup> workshop and the following are revisions that would be made to the regulations and procedures based on that discussion:

- Non-Eligibility: revise to allow non-immediate family members to be eligible for an MIU.
- Household Preference: review to ensure the preference for South Portland residents is not discriminatory in terms of fair housing laws.
- Administration: I have requested a fee schedule from the South Portland Housing Authority for administering the ordinance.
- Household Eligibility: revise to be more flexible relative to the requirement for holding a unit open for 30 days if unable to find a household of a qualified size.

He stated that this is consistent with the Comprehensive Plan and staff recommendation is for the Planning Board to send a positive recommendation to the Council. Changes can be added to the existing draft; one would be adding in the new calculation or eliminating the sentence. The second is changing \$100,000 in lieu fee to \$75,000. He noted that Ms. Boudreau suggested a sunset clause since this is something new and we may not know how well it works until you use it for a while. He thinks the clause would be okay and if it's included, he recommends three

years. His concern is that if you go less than three, someone proposing to develop but has the ability to wait could do so until the provision sunsets out.

#### PUBLIC HEARING OPEN

**Vincent Maietta**, introduced himself and said he was fortunate enough to obtain the zone change and is hoping to build apartments soon. He is concerned about inclusionary zoning because they can't nail down what it will mean to them. His project is around \$40 million and he has run into trouble with banks because they are worried about the cash flow that the properties will produce to fund paying back the loan. They have to show what the market needs for a market rate unit and they hear there is a need for nicer units than some of the agencies have been able to build. The South Portland Housing Authority does a great job building them, but they are subsidized and he's not. He gave highlights of his project: they are proposing 265 units and six floors. From their studies, they hear people want nine-foot ceilings, washer/dryers in each unit, trash chutes, recycling onsite, air conditioning, granite counters. Their studies show this as their market, and they are not luxury. Building these and taking 27 units for inclusionary would be \$400-\$500 per month less per unit.

He reiterated that banks are concerned about the ability to pay back loans based on those medium-quality rental units. This forces redesign: laundry on the first unit, no trash chutes, eight-foot ceilings, and no air conditioning. They are proposing outdoor decks on every unit and it's possible some won't have them. He understands the City needs this and he will build regardless, but he wishes he could figure out a way to include both higher and some less expensive units. It's difficult to do that based on Portland's ordinance; they don't want all of the middle-income units in one building. They want everyone to feel comfortable and fit in, and it's difficult to build one unit with no air conditioning and eight-foot ceilings and build another next door that's higher-end.

He explained he is here to show what they go through in the private sector with no government subsidies and TIFs. They are excited to do it and appreciate help from the City, but it could end up that other developers not as far along as him may choose not to build here. Going forward, if he wasn't as far along as he is, he may do this project in another town without inclusionary zoning. He believes there is a need for higher-end units as well. If you read the South Portland Housing Authority's website, they say there are 10,000 residential homes in the City and the majority and averages are basically within the inclusionary 30% of the 100% of the average median income. The average numbers for rental units in South Portland aren't as bad as people think; the inclusionary zoning will make these units \$900-1100/month.

**Russ Lunt, Brigham St.**, is glad they want to build here. He thanked Mr. Maietta for the explanation.

**A. Dowling** looked on page 2 of the memo, under Household Preference, and asked if there is something in the draft ordinance that addresses a preference for South Portland residents. **T. Haeuser** said not in the ordinance but in the Planning Board regulations that would be adopted.

**A. Dowling** asked if someone who lived in South Portland for 15 years but moved because the cost was too high to Westbrook would be considered a resident. **T. Haeuser** said there was something about former residents in the Portland model. If it's not there, they can address it.

**A. Dowling** said if someone was here for a while and need to leave because of this issue they're trying to solve, it would be unfortunate if they aren't able to come back. He asked about the issue relating to immediate family members of the owner of the property. The workshop had a developer who said he has people in his family who could benefit from a more affordable apartment. It makes sense to him but he's wondering how this rule was made.

**T. Haeuser** said it's not a real black and white thing. There have been some cases where immediate family have benefited because the loophole existed. It's nice that some people have extended families and a lot of relatives. They talk about wanting to have younger people able to live here and this is another way you may be able to. They could talk more when the time comes; there could be a cap.

**A. Dowling** wants to help more than less people but he also doesn't want to give unscrupulous people an advantage.

**K. Carr** said they are talking about Planning Board regulations, where they have more flexibility.

**A. Dowling** gave an example where if someone has a housing voucher and their parents have an apartment in their home, you can't use the voucher. If it's their aunt and uncle with the apartment, they can use it.

**K. Carr** is for defining it and removing ambiguity. He thinks there are a lot of things like that that they will need to deal with.

**T. Neff** is sensitive to developer's concerns and she appreciates that Mr. Maietta spoke. The incentive for the permit fee reduction stuck out to her and she asked if it's the best they can do. It doesn't seem like much when they're talking about these types of projects. She understands that they get the height and density incentives which could potentially be more lucrative, but permit fee seems "nickel and dime" to her.

**T. Haeuser** said this incentive is not available for a developer who meets the basic 10% requirement. This only is what you get for going beyond. Portland seemed convinced that if you have an inclusionary zoning requirement, you should have opportunities to go beyond.

**T. Neff** understood these as incentivizing developers to choose to include the units rather than paying the fee and getting out of it.

**T. Haeuser** said that's not what they're meant to do. \$15 per thousand is what their permit fee is so when getting into million dollar projects, they have a big fee. Providing the unit is more expensive but it's something that developers can look at.

**T. Neff** understands the incentive more now and said she was just looking at the one example of the \$2 million development. She asked for the decision making process for \$9.35 as opposed to \$15. **T. Haeuser** said they're taken from Portland.

**T. Neff** asked if there's a set reduction. **T. Haeuser** said he can't say other than the schedule works in Portland.

**T. Neff** said she thought this was a point worthy of further discussion in terms of how to incentivize and provide something attractive to a developer.

**K. Carr** wondered if there would be logic in moving the incentive schedule into the regulations so they had some ability to figure out what works.

**S. Puleo** asked how that works with the code. **T. Haeuser** said the fees are set code and have to stay there.

**A. Dowling** said if they're trying to incentivize people to stretch beyond 10% and are cognizant that people will see their zoning and build somewhere else, he thinks the incentive with the building permit fee is a good idea. He questions the \$9.35.

**T. Haeuser** said he has to look at the numbers again. The point is the middle column, those are what you're trying to achieve. He's not sure it's applied correctly to their fee.

**L. Boudreau** said they need to be aware of the incentive. It sounds like the inclusionary zoning gets the incentive and it doesn't. If developers are struggling with the first requirement, going beyond is probably something you'd like to happen but is unlikely. They are building the ordinance in and not giving the developers anything. To her they are imposing a financial handicap on construction. They need to weigh that against economic development and market pressures for additional housing. Bankers are going to see this as a handicap to the investment. She thinks they have to be so sure they need an ordinance like this. She's not sure. The South Portland Housing Authority will apply for money to build those—will they alleviate a potential problem?

**T. Haeuser** was at the neighborhood meeting for the Housing Authority's proposal to do a project with mixed income in Knightville. There was tremendous neighborhood opposition to any zone change. It seems unlikely in the face of that neighborhood opposition that they will build a project within existing zoning. He doesn't think the success rate will be 100%. They have gone through a lot of discussion and research and effort related to affordable housing over the last year. It's been presented by a variety of people as a serious problem for the City. Factoring in short term rentals, it is growing and affecting people.

**L. Boudreau** has spent time agonizing over this decision, which is a reason she asked for a sunset clause. Overall, she doesn't agree with this. It's really a policy decision. It doesn't matter to a Planning Board; the roads, streets, water, who lives in it and how much it costs—she's not sure how they get factored in. Her feeling is if something is passed, they need to check it and see if it's affected them positively or negatively. She said two years, Mr. Haeuser said three. In his

rationale was her concern: if two years from enactment they saw someone who wanted to build here had changed towns, that's a huge indication to her that they couldn't work out a deal. She doesn't think they should hold development of additional housing for more than two years. She would love to see Mr. Maietta be successful and how the City works its way through it. If the South Portland Housing Authority can't get units on their own, maybe they help Mr. Maietta pay. She likes development that would be mixed as opposed to a house of all affordable unit. Labeling housing can make it undesirable. She could vote for it tonight if they add a sunset clause that stops it in two years unless Council acted to extend it. Otherwise, she can't see herself voting for it. The economic damage to the City and developers is too great. Another reason for two years is they have a good number of units, condos, single families, coming on line. If no one built for two years, she wouldn't like it but she thinks they could survive it to test this.

**A. Dowling** is glad she used the word “agonizing” as he has been agonizing also. He wants to do the right thing but he doesn't immediately know what it is. He knows many people in Portland making decent money who are crammed into a small apartment for \$1800 a month. They have had inclusionary zoning for some time and by most accounts their housing crisis is worse.

**T. Haeuser** said they have only had inclusionary zoning for several years. **K. Carr** thinks it's been 7-10 years. They will check.

**Pete Connell, Ocean Properties**, said Ms. Boudreau raised good points. He asked if anyone in Portland has built more than the minimum. **T. Haeuser** isn't sure.

**P. Connell** doesn't think so, particularly if they were single-family condos. It doesn't make sense to build more, and in Portland they typically pay the fee. Ms. Boudreau raised a good point about a sunset. One of his concerns is they will likely not develop all of their various neighborhoods and he expects a sunset on that provision may inhibit a sale to developers—they will wait for two years or go somewhere else. His research is the same as Mr. Maietta's in the type of product that has the greatest demand. He believes it's a supply issue. There will be a lot of middle income housing created by virtue of his project.

**L. Boudreau** appreciates that they came to the workshop. She asked if he didn't like a sunset provision because developers might not buy his property and try to hold out. **P. Connell** said he's looking at it strictly as business; he thinks it's a good idea except when you are going to market some projects.

**L. Boudreau** asked if he thinks she should approve it and not put in the sunset. **P. Connell** said no, he was raising a potential consequence. He wouldn't want to be in her shoes making the decision because there are many unknowns.

**S. Puleo** said Portland approved inclusionary zoning in October 2015.

**K. Carr** said there is some sort of policy objective tied to what should be measurable in terms of the amount of housing that meets a particular benchmark. If a sunset provision is something the Council is not sympathetic to, he wonders if there would be a consideration of a benchmark.

**T. Neff** said while she's sympathetic to a developer's prospective and shares Ms. Boudreau's concern about the incentives for additional housing, she is generally in favor of the ordinance and the idea of inclusionary zoning. She lived in a condo in Cambridge, where they had this zoning, and is familiar with the concept. She thinks as a City, they have to do something and thinks this is a logical step. She's not sure she's in favor of the sunset provision and how it would work. She thinks it would send the wrong message.

**K. Phillips** said there are lots of different options. There are so many unknowns.

**V. Maietta** asked when the last substantial apartment was built in South Portland by a private developer. There isn't one because it's hard. He thinks it's important to have affordable housing. The South Portland Housing Authority says the majority of housing in the City meets the inclusionary guidelines. Portland has a bigger problem because the houses are selling at \$400-500/SF. It's a different problem. Subsidized works, and that's all that's been built. The only way you can provide it is if you have help; he doesn't think most developers will be able to accommodate it. He can accommodate it, but he can't provide what he wished he could do but he will do as much as he can. He asked how many of the rentals that exist meet 30% of the median income.

**T. Hauser** said he will look. The Affordable Housing Committee feels there's a need to do a registration program for rental units because they believe there isn't sufficient data available to understand these things.

**V. Maietta** asked the Board to read the South Portland Housing Authority's website. They talk about it and provide Census data. He agrees that there could be unintended consequences. They need to put more units out there for people, not discourage them.

**A. Dowling** said one more recent private apartment would be Liberty Commons, across from the airport. Aside from that, point well taken.

**K. Carr** said the one concern he has is founded in the post-2008 economy and the ability to leverage funds. He asked the Board if there is discussion about the suggested edit under (d)(3), page 7. He would like to keep it in the ordinance. They don't want to create ambiguity.

**A. Dowling** doesn't have a problem with either change.

**T. Neff** motioned to send a positive recommendation to the City Council regarding the proposed inclusionary zoning and housing trust fund amendments based on their consistency with the City's Comprehensive Plan.

**The Board further recommends that the following revisions be made to the proposed ordinance:**

**Strike the middle column in the incentive table on page 4,**

**Sec. 27-1804. Ensuring Middle-Income Housing.**

. . .

(d) *Standards.*

. . .

(3) Middle-Income units need not be the same size as other units in the development but the number of bedrooms in such units, either on- or off-site, shall be ten (10) percent of the total number of bedrooms in the development. For the purposes of this section, the number of bedrooms in a market rate unit shall be the higher of the actual number of bedrooms in the unit or the total area of the market rate unit, less 800 square feet, divided by 400 square feet.

(4) As an alternative to providing middle-income housing units, projects may pay a fee in lieu of some or all of the units. In-lieu fees shall be paid into the Housing Trust Fund as defined in Sec. 27-1806. The fee for affordable units not provided shall be ~~\$100,000~~ \$75,000 per unit, . . .

**A. Dowling** seconded.

**A. Dowling** asked if they are still doing a sunset clause. **K. Carr** said this does not include the sunset clause.

**L. Boudreau** said people are still sitting with no rules to work under if they send a negative recommendation and it gets sent back. She assumes they held an effective date. In truth, she thinks it's unfair to keep it going. She will vote if there's a sunset clause because it expresses her hesitation and concern—a way of saying there will be unintended situations they don't want to live with.

**K. Carr** said if those things came to pass, who's to say the City Council wouldn't revisit the ordinance and make it better? **L. Boudreau** thinks that if negative consequences came about, the Council would have to look at it. She doesn't think these are the only two properties.

The Board discussed potential scenarios.

**T. Haeuser** said he believes there's an error in the incentive table and believes the middle column should be removed.

**T. Neff** amended her motion to strike the middle column on page 4.

**Vote (2-3) (L. Boudreau, A. Dowling, K. Phillips opposed, W. Laidley absent, District 3 vacant). Motion does not pass.**

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

**Russ Lunt, Brigham St.**, asked about CarMax and the house on Broadway across from the redemption center, which he thinks is for sale.

**S. Puleo** said CarMax is building and **K. Phillips** said the house is for rent.

**R. Lunt** thought Ms. Boudreau's comments were helpful.

Item #8. Comments from the Planning Board and Planning Director

**A. Dowling** thanked Mr. Misiuk for his service on the Board and said he will miss his sense of humor. He valued his unique perspective and wishes him the best.

**T. Haeuser** talked about a national planning conference he attended in New York.

Item #9. Adjournment

**10:00 p.m. A. Dowling motioned to adjourn. L. Boudreau seconded; (5-0) (W. Laidley absent, District 3 vacant)**

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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.