

**CITY OF SOUTH PORTLAND**

**Name of Body:**  
**Results for Meeting of:**  
**Meeting Begins:**  
**Meeting Location:**

**Planning Board**  
**September 26, 2017**  
**7:00 p.m.**  
**Council Chambers, City Hall**

**RESULTS**

**Members Present**

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

**Staff Present**

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

**Absent**

Linda Boudreau

**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 September 12, 2017, Planning Board minutes**

**W. Laidley motioned to approve the September 12, 2017 Planning Board minutes. A. Dowling seconded; (6-0) (L. Boudreau absent).**

**Item #2A. Consent Calendar. Performance Guarantee Release – Main Street Retail Center – 385 Main Street – G & J Properties, LLC**

**A. Dowling motioned to approve the total release of the \$52,000.00 Public Improvements and \$6,783.00 Erosion Control performance guarantees for the Main Street Retail Center, 385 Main Street. K. Gatti seconded; (6-0) (L. Boudreau absent)**

Item #3. PUBLIC HEARING – Amended Site Plan Review — Medical Office Building — 192 Western Avenue — Dr. Daniel J. Armstrong of KADA Properties, LLC – FINDINGS

Dr. Daniel Armstrong of KADA Properties, LLC is requesting an amended site plan review to construct an addition to his existing medical office building located at 192 Western Ave. The applicant proposes to construct an addition onto his existing medical office building located at 192 Western Avenue. The proposed addition will be 4,560 SF in size with additional parking and stormwater facilities. The proposed improvements include a two-way driveway around the building, the addition of a dumpster facility, an underground stormwater detention system, an above ground FILTERRA stormwater treatment unit, and a walkway connecting to the Western Avenue sidewalk. The applicant's proposal will create a total of 50 parking spaces, including five handicapped spaces to serve the existing building and the addition. The parcel is further identified as Assessor's Tax Map 67, Lots 12 & 12B, located within the Suburban Commercial District (CS).

Public hearing notices were mailed on September 18, 2017, to the 31 property owners within 500 feet of the proposed project, the applicant and were sent via email to the Conservation Commission, Planning Board, and City Council.

**A. Dowling motioned to approve the waiver of request of Section 27-1428 (a), Time Limitations, for the opportunity to have an 18-month extension to the approval period for the start of construction, expiring on ~~October 10~~ September 26, 2019;**

**to approve the amended site plan application of Dr. Daniel Armstrong of KADA Properties, LLC dated August 12, 2017, through September 7, 2017, and drawings August 16, 2016, through August 17, 2017, for a Medical Office Building located at 192 Western Avenue 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 scheduling a pre-construction meeting with the City, the applicant shall pay all outstanding review escrow account fees and post the necessary performance guarantee(s) in such amount(s) as established by the City.**
- 3. The property is subject to a Stormwater Management System Maintenance Agreement that runs with the land and is binding upon the property owner and its successors and assigns as their interests may from time to time appear. Prior to the scheduling of a preconstruction meeting, said agreement shall be duly executed and recorded by the applicant at the Cumberland County Registry of Deeds, with a copy of the recorded instrument contemporaneously provided to the Director of Planning and Development.**
- 4. Prior to the issuance of a Certificate of Occupancy for the project, the applicant must submit an inspection report to the Code Enforcement Officer documenting that the stormwater facilities have been installed and are functioning as designed and approved and are fully operational. This inspection report must be prepared by a qualified inspector as defined in Section 27-1536 (c)(3)(e) of the South Portland Code of Ordinances, as may be amended.**
- 5. On or by July 15th of each year, a completed and signed certification shall be provided by each property owner or applicant to the City's Director of Water Resource Protection in a form provided by that Department, certifying that a qualified inspection employed by the property owner or applicant has inspected, cleaned and maintained the stormwater management facilities, describing any deficiencies found during inspection of the stormwater management facilities and certifying that the person has repaired any deficiencies in the stormwater management facilities noted.**
- 6. Prior to the issuance of a building permit, the applicant shall provide the Planning and Development Director with satisfactory evidence that one of the first six methods set forth in Section #3(B) of the City's Site Plan application form relating to the applicant's financial capacity is in place.**

**K. Gatti seconded; (6-0) (L. Boudreau absent).**

## FINDINGS

**A. Dowling motioned to accept the findings. W. Laidley seconded; (6-0) (L. Boudreau absent).**

Item #4. PUBLIC HEARING – Zoning Text Amendment and Zone Map Change – MeetingHouse Hill Community Commercial District (MHCC) – 352, 362, 366, 372, 374, 376, and 378 Cottage Road – City of South Portland

The City of South Portland is requesting a second Land Use Recommendation to rezone the properties located at 352, 362, 366, 372, 374, 376, and 378 Cottage Road. The City Council held a workshop on July 24, 2017, and decided to refer to proposed rezoning the Planning Board for a public hearing. The Planning Board held a public hearing on August 22, 2017 and provided a positive Land Use Recommendation to the City Council. The City Council modified the proposed ordinance provisions requiring another Planning Board public hearing on the changes. As described at the August meeting, the proposal is to create a new zoning district known as the “Meetinghouse Hill Community Commercial (MHCC) District.” The zoning district change is found in the City’s Comprehensive Plan, Sections 6-11 and 6-16. The parcels are further identified as South Portland Assessor’s Map 10, Lots 206, 207, 208, 209, 209A, 210, and 211, located within the Transitional Residential (RT) district and Limited Business (LB) district.

The Planning Board will provide a Land Use Recommendation to the City Council, per Section 27-115 of the Codes of Ordinances.

Legal advertisements regarding this request appeared in the Portland Press Herald on September 12 and 18, 2017. A public notice was posted at City Hall and on the City’s Planning Board webpage on September 12, 2017. Public notices regarding the proposed zoning text amendment and map change were mailed on September 12, 2017, to 174 property owners located within 500 feet of the parcels under consideration and the seven property owners under consideration and were sent by email to the Conservation Commission, Planning Board, and City Council.

**K. Gatti motioned to recommend to the City Council to approve the zoning map change for Assessor’s Map 10 Lots 206, 207, 208, 209, 209A, 210, and 211 from the Transitional Residential (RT) and Limited Business (LB) districts to the Meetinghouse Hill Community Commercial (MHCC) District. W. Laidley seconded; (6-0) (L. Boudreau absent).**

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

**Naomi Hall, 34 Carter St.**, said in terms of getting communities involved, there was a larger turnout at the last public hearing due to the fact that they participate so much in the local community. Creating community hubs is part of the Comprehensive Plan and one of the main benefits is getting participation and awareness within the City Council and Planning Board.

**Russ Lunt, Brigham St.**, said Ms. Dillon is right, it’s good to have the public engaged. He thought Mr. Dowling’s comments on the speed bumps were good as well. He also thought there were good comments last night at the Council workshop. He thinks they realize what the Board does. The Board has a lot going on and he thinks they do a wonderful job.

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

**T. Haeuser** said they had a second public meeting at SMCC on the Smart Corridor transportation study and there are recommendations to beef up pedestrian crossings at Pine and Broadway and Sawyer and Broadway. At Broadway and Ocean, they are wrestling with the existing free right from Broadway onto Ocean and would like to control it for pedestrians. One recommendation at Broadway and Sawyer is a roundabout and they will look more at that. As far as the project for converting streetlights to more efficient LED lights that the City would own and not lease from CMP, they are close to the stage of putting test lights around the City. Once it's finalized there will be info on the City's website and a way to provide feedback.

**K. Carr** asked about a legislative update and if anyone is going to the Municipal Client Seminar on Thursday night.

**W. Laidley** is going and will get information. He asked if there is information on the two big housing projects.

**T. Haeuser** said no. **S. Puleo** said they are working on it; the one on Clark's Pond had challenges with water lines and had to negotiate. There is nothing on Sable Oaks yet.

**K. Carr** said last night the City Council had a workshop and the first item was the role of the Planning Board. He, Mr. Laidley, and Ms. Dillon attended. Mr. Haeuser. He thinks the crux of the problem they attempted to solve was difficult to pin down and he sensed that was felt by some Councilors. One concern is if the Board should be limited to a quasi-judicial role or if there is there a role in advising policy.

**W. Laidley** said it was a bit nebulous and went back and forth because Councilor Rose talked about legislative possibilities of the Board versus being held accountable in some respect. Councilors act legislatively and are subject to losing their election and that isn't the case for the Planning Board. He didn't see it progress.

**T. Haeuser** said the big one on legislative policy was the feeling on zone changes where it's a recommendation—that is a more legislative action. If the zone change comes from the Planning Board to Council, in effect the Board is acting in a policy-making way. There was concern that policy making should be reserved or steered by Council. He thinks there was an objection to zoning requests coming to the Board first whereas already knowing that concern, they changed practice and now go to Council workshop first. The idea that the Planning Board shouldn't have policy recommendations would be different from any other community around. It's felt that the Board has a very important role at times to make recommendations based on the Board's land use knowledge. Another aspect was how the Planning Board can initiate recommendation of the Council when Planning Board members don't have access to the agenda. Councilor Rose felt staff controls the agenda and the Board is locked out of the ability to have a more active role. As he has mentioned to members, different Boards have been more or less active in working on ordinance changes and other policy. It's not frequent and there could be subcommittees but as he explained, what often happens is other committees are formed for more specific purposes. Each generally has a Planning Board representative. If Board members want a more active role, there is opportunity, but he's not sure about setting the agenda. You could make requests during this item or they could come up with something different. Councilor Morgan asked if they've had a vision-setting workshop as a Board and they haven't. There have been training sessions but nothing to spend time to talk about how things are going and what they're interested in. He thinks that's a good idea.

**W. Laidley** said it was called a retreat. Another issue from Councilor Rose was the indication that because the Planning Board works with staff, it becomes a rubber stamp of the executive branch. That does not happen—if the issues are vetted and meet requirements, they have to approve them.

**T. Haeuser** said the other thing was both Councilors and some members talked about the problem of the public not understanding when there are items that are quasi-judicial that are development applications that the Board makes a decision on. They have a limited range of decision making to work with. It seems like that is almost never well understood by members of the public—an application is processed, notices are sent, and the Chair reads opening remarks, but everything becomes what’s good for the neighborhood or City. That is something to talk more about, but he reminded Board members that if you have a tough item, almost all nonconforming lots are controversial, another option is postponement if you think there’s a need for more information.

**K. Carr** said the Board has exercised that option at least twice in the past few months.

**L. Dillon** stated that another point was that charter or code has contradicting language that Councilor Rose was trying to clarify, but there was no action taken on that. In practice, beyond the language, it was mentioned that there isn’t clarity in the relationship between the Council, the Planning Board, and staff. She agrees and being a new member and hearing the confusion from the public, she thinks there needs to be internal clarity and external communication. They have the platforms for this communication such as Facebook and the City website and these provide opportunities to educate and involve and require no money and very little time. One proposed actionable item regarding this was introducing more clarity in the sequence of which items are heard and by which body. She thinks clarifying that and codifying it with something such as waivers should, in certain situations, make it less necessary to go to City Council workshop first and they could waive to the Board’s expertise. She also echoed that there would be value to a Board retreat and training.

**K. Carr** thought the only truly actionable item was a modification to 27-115A. He thought that other members of Council felt that they should leave the flexibility in place. He tried to stress that they try to attempt to make the limits of their role clear in terms of legislation and policy. He wants the Board to know that there was love in the room. In the line of inquiry about a retreat and setting goals, he was honest with Councilor Morgan in stating that the Board is busy. It’s not a suggestion to not pursue thinking big, but to be mindful that there are only so many hours in every other Tuesday evening. There were other things mentioned such as tools to not carry around binders. He appreciates the thought but there may be higher priorities.

**A. Dowling** read the materials for the workshop and watched it online. He thought Councilor Rose brought up good questions and astute observations about how the Board functions and how it relates to what the ordinance says. He didn’t feel Councilor Rose was being critical of the Board; he felt he was trying to see if there were ways the Council could streamline things. One point was how Council appoints members to Planning Board; his point was that it is a bit like the Supreme Court with no term limits. He felt he was asking if it should change. Mayor Smith brought up the idea of iPads but he feels it could be another tablet. He has thought about that because the binders are sometimes not large enough and heavy to carry around. In the spirit of Board members having access to the agenda, he would like the Board to consider holding a workshop to discuss the idea of switching to a paperless Planning Board.

**K. Carr** thought it could be a goal setting conversation in the form of a workshop. He would be thrilled to see the City be at the point of having enough people volunteer so that being a member was more competitive. He filled out the volunteer form and felt there was an appropriate level of vetting and expectation setting; he would be willing to step aside for someone who was equally or more motivated.

Item #7. Adjournment

**9:15 pm A Dowling motioned to adjourn. K. Gatti seconded; (6-0) (L. Boudreau absent).**

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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.