

CITY OF SOUTH PORTLAND

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

Planning Board
October 10, 2017
7:00 p.m.
Council Chambers, City Hall

MINUTES

Members Present

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

Staff Present

Tex Haeuser, Planning & Develop. Director

Absent

Steve Puleo, Community Planner

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 26, 2017, Planning Board minutes.

K. Carr noted that “in the past month” should be changed to “in the past few months” under Item #6.

A. Dowling motioned to approve the September 26, 2017, Planning Board minutes with the correction as noted. **K. Gatti** seconded; (7-0).

Item #2A. Consent Calendar – Amended Site Plan Approval – CarMax Auto Superstore – 415 Maine Mall Road – FINDINGS

T. Haeuser explained that the consent calendar is for projects that are more than a de minimis change but less than something that would otherwise have a Public Hearing. Item #2B was intended to be a consent calendar item but Item #2A was not and notices were sent out. For consistency, based on the relatively minor change in the site plan, it was changed to a consent calendar item. He suggested that it would be appropriate for the Chair to inquire if there is anyone from the public in the audience to testify on the item. If so, it would be moved to a regular agenda item.

K. Carr asked if anyone from the public is in attendance to speak to Item #2A.

Austin Turner from Bohler Engineering was in attendance on behalf of the applicant and David Wheeler from CarMax was in attendance to answer any questions. Since there was no one from the public in the audience to speak, the Board proceeded with this item on the consent calendar.

T. Haeuser introduced the item and showed the location on the map. He noted that the applicant originally received Planning Board approval on December 13, 2016. The applicant proceeded with construction and when it was time for a permit, the South Portland Fire Department determined that an above-ground fuel storage tank was not allowed under Chapter 8 of the City's Code of Ordinances. The applicant will now substitute an underground tank. He showed where the above-ground tank would have been and where the underground tank is going. The Fire Department and consulting engineer have raised no objections to the change. Additionally, the applicant has provided evidence of submitting DEP registration documents for the underground tank. Staff recommendation is for approval and he reviewed the conditions.

W. Laidley said he felt foolish it was approved. If the Planning and Fire Departments didn't catch it, maybe he shouldn't feel that way. He wonders about the process.

A. Dowling also felt that way and wonders how it was missed by so many people.

L. Boudreau said it felt like the Fire Department has used a different process than they've seen previously and they recently commented that there wasn't time to check over a project. She hopes that the Fire Department is being clear and realizing the responsibility for the Board and themselves and the expense when they don't catch these things up front. However, they will get it fixed and the tank will be underground and safer. She's glad it's been caught and brought forward. She apologized to the applicant for having to go through this.

L. Boudreau motioned to approve the amended site plan application of CarMax Auto Superstore, Inc., submitted on September 19, 2017 and revised through September 28, 2017, and drawings from August 2, 2017, through September 6, 2017, to substitute an underground fuel storage tank for an above ground tank and related fuel system improvements 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. **Except for the amendments approved as part of this amended site plan approval, all other elements and requirements, including conditions of approval, from the December 13, 2016 Findings of Fact remain in effect.**

A. Dowling seconded; (7-0).

FINDINGS

K. Carr noted that in #7 of the findings, the words "nonconforming lot" should be removed.

L. Boudreau motioned to accept the findings with the correction as noted. **W. Laidley** seconded; (7-0).

Item #2B. Consent Calendar – Amended Site Plan for a Home on a Nonconforming Lot of Record – Mike Mitton – 2 Loveitt Street – FINDINGS

T. Haeuser introduced the item and showed the location on the map. He explained that is an amendment to the April 11, 2017, approval for a single-family home on a non-conforming residential lot of record at 2 Loveitt Street. There were grading and building changes; grading changes were minor regrading between the property and the abutter as it seemed beneficial to both owners to make the change. This is an after-the-fact approval because they should have come to the Planning Board first. There is evidence from the abutter that she is in favor of the grading changes. There were also a few changes to the building, including an additional window in the stairwell and the dimensions of a porch and deck have increased in size.

The peer review consulting engineer reviewed the grading and found that there will be no significant change to the drainage patterns. The building changes were not run by the consulting architect, but staff didn't feel the minor changes were significant enough to do so. Staff recommendation is for approval and he reviewed the conditions.

L. Boudreau stressed that she's never happy doing things after the fact. Mr. Mitton has worked with them before and knows the rules. She hopes they don't start seeing more of these and hopes they make it clear that there is no deviation from what the Planning Board approved until they hear about it.

K. Carr noted that the Board has been meeting twice a month so it's not a timing issue in terms of availability of the Board.

K. Gatti asked if there's a penalty for after-the-fact approvals. **T. Haeuser** said there is an after-the-fact penalty for building permits but not for Planning Board approvals.

K. Gatti said they may want to consider it. There is an appropriate way to go about this and people may not stick to it without consequences.

W. Laidley agreed and thought it could be an item for their Planning Board retreat.

K. Carr asked if in a case like this, it is safe to presume the certificate of occupancy would be held up pending changes. **T. Haeuser** said yes.

K. Carr said that is an indirect penalty in itself because the developer would be tying up his or her capital. It may not be a lot but it's something to consider.

L. Boudreau motioned to approve the amended nonconforming house lot site plan application of M.F. Mitton Construction, LLC dated September 5, 2017, for grading, window, porch, and deck modifications 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. **Except for the amendments approved as part of this amended nonconforming house lot approval, all other elements and requirements, including conditions of approval, from the April 11, 2017 Findings of Fact remain in effect.**
3. **Prior to the issuance of an Occupancy Permit, the applicant shall provide evidence to the Planning & Development Director that the Certificate of Approval and Finding of Facts for this approval of amendments has been recorded at the Cumberland County Registry of Deeds.**

W. Laidley seconded; (7-0).

FINDINGS

A. Dowling motioned to accept the findings. K. Gatti seconded.

K. Carr said notwithstanding previous comments, it is important to point out that the developer should be commended for the collaborative solution with the neighbor that will benefit both properties.

Vote (7-0).

Item #3. PUBLIC HEARING – Site Plan — 16 Hill Street — JLJ Construction, LLC – FINDINGS

JLJ Construction is requesting site plan approval to improve a 15,682 sq. ft. lot by adding 384 sq. ft. to an existing house and constructing a 2,006 sq. ft. two-unit attached building. The parcel is further identified as Assessor’s Tax Map 25, Lot 281, located within the Residential G zoning district.

Public hearing notices were mailed on September 29, 2017, to the 62 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.

T. Haeuser introduced the item and showed the location on the map. This is a single-family house lot with land behind it and the applicant is creating a duplex in the G zone, which allows multi-families. There was initial thought that it may be a subdivision but it is not three buildings in a five year period since one building is already there.

He showed the plan and orientation with the street. He showed the existing home and parking and the proposed two-unit and parking. Because the applicant is only adding two units, there is no traffic impact to speak of. There are fire hydrants within sufficient proximity.

Stormwater has been worked on conscientiously. Because it’s a small site without much room, it wasn’t possible to meet both treatment of 0.5” of 90% of the impervious surfaces on the site and 0.2” of runoff from all disturbed pervious areas. Therefore, a waiver is requested to treat 0.5” from 90% of impervious surfaces and 0.2” from 64% of disturbed pervious surfaces. They made an effort to reduce impervious as much as possible by narrowing the driveway where they could and reducing two parking spaces to 8’x16’. They were able to treat 50% of runoff from the existing structure, none of which is currently treated. He reviewed the stormwater management system, where they will have an underdrain along the driveway on the southwest edge of the site that will be connected to the City’s stormwater system. On the eastern side of the duplex, it will be tied into the underdrain of the first structure. These are designed to hold and treat the required amount of runoff while having overflows for extreme events. Additionally, the basement sump pump from the proposed two-unit will be routed directly to the underdrain in the infiltration swale on the southwest edge of the site.

There is not much proposed additional landscaping; there are trees and shrubs on portions of the lot line and abutting properties. They do not anticipate any nuisances and the applicant has provided evidence of solid financial capacity.

There is a proposed waiver for an 18-month extension along with the six months they’re given, bringing the applicant to October 10, 2019. He reviewed the stormwater waiver request and conditions, stating that condition #7 may not be needed. He will look to the applicant to confirm whether or not there will be a homeowner’s association to begin or if they will be rental units.

Ryan Wingard, Wright Pierce Engineers, introduced himself as representing the applicant. While there is the waiver to have the 18-month extension, the applicant is ready and willing to start construction as soon as possible and does not need to take advantage of the waiver. As for condition #7, at this time the plan is to maintain these as rental units with some sort of option to create a condominium association at some point in the future. He reviewed the addition to the existing structure, showing it on the plan. They tried their best to minimize impervious and balance with parking requirements. The fire lane requirements added some impervious to the site but they are well under the limit.

PUBLIC HEARING OPEN

David Noakes, 38 Cole St., recently moved here and said there are a lot of multi-families in the area. He is in a single-family home. He wanted to understand the layout of the proposed project. He is satisfied that it appears to meet all requirements and it won't be a problem for him.

L. Boudreau asked for a clarification on stormwater. Is this better or worse than currently and have they accommodated the new structures?

T. Haeuser said there is more impervious and the applicant is not able to treat as much as they would like them to. He said that this particular standard is difficult to meet and it's common to get this waiver request. In general, they have very high standards and go well beyond what most communities do. This is not in an impaired urban watershed area and is not quite as sensitive in that regard but they will still need a waiver.

K. Gatti asked what kind of rental units they will be—short-term, year-long?

Chris King, Cumberland, ME, said these would be year-long leases.

L. Dillon asked how many total units there will be and for an explanation of the addition.

R. Wingard said there would be three units: the existing structure is a single unit and the duplex in the back. The addition is to accommodate a third bedroom in the existing structure to make it more rentable.

L. Boudreau is happy to hear the addition is for a third bedroom because she's concerned the City doesn't have enough three-bedroom rentals. She asked if they're more or less apt to make these into condominiums. It's been a long time but she knows of one other place that was approved as apartments to be converted to condos. She wonders if they should address it now if the intent is to go to condos. She doesn't know how difficult it will be to change.

R. Wingard said the concern was tax implications for condominiums and the association. In order to avoid those expenses, their attorney suggested they keep them as rentals for now. He also wanted to ensure they didn't do anything that would make it difficult to convert them in the future. They may reconsider making this a condominium at this point if there was some sort of hurdle to cross in the future, but they haven't heard of anything in that regard.

L. Boudreau asked if Mr. Haeuser has heard of any hurdles.

T. Haeuser hasn't heard of anything. There is a provision in Chapter 14 relative to converting apartments to condos but it is more of a tenant's notice and rights ordinance. Otherwise, they have apartments from that go through conversions to condos and they seem to be able to do it without much interaction with the City.

L. Boudreau asked if he has seen regulations on a site plan that would be different from an apartment to a condominium.

T. Haeuser said no; if it's going to a condominium, the City's interest is to ensure they do a thorough job in setting up homeowner's association.

L. Boudreau asked if the biggest responsibility is on an attorney working with the City to draft those documents. **T. Haeuser** said it's owner issue and doesn't enter into the City realm much.

W. Laidley said someone in Washington may say this is private property and we will do what we want with it. He's glad to see that new utilities will be underground. He's not sure they should give up the 18-month waiver.

M. DeRose has no concerns.

A. Dowling asked if they removing condition #7. **K. Carr** said yes.

PUBLIC HEARING CLOSED

L. Dillon 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, 2019;

to approve the waiver request of Section 27-1536(d)(1)(b) to allow for the treatment of 0.5" from 90% of impervious surfaces and 0.2" from 64% of disturbed pervious surfaces;

to approve the site plan application of JIJ Construction, LLC dated August 1, 2017, through October 3, 2017, and drawings from August, 2017, through October, 2017, for the addition of a duplex to a house lot 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. The area between the street utility excavations shall be milled so that pavement restoration is unified.

~~7. The applicant shall provide the Planning & Development Director with proof of filing of the homeowners' association articles of incorporation with the Secretary of State's Office prior to the issuance of any building permits. In addition, the Corporation Counsel must review and approve the homeowners' association documentation for legal sufficiency and to ensure perpetual maintenance of stormwater management infrastructure prior to the issuance of any building permits.~~

A. Dowling seconded; (7-0).

FINDINGS

A. Dowling motioned to accept the findings with the correction of “form the proposed two-unit” to “from the proposed two-unit” in #5, the words “amended nonconforming lot” removed from #10, and removing condition #7. K. Gatti seconded; (7-0)

Item #4. Public Comment on Items Not on the Agenda

No comments

Item #5. Comments from the Planning Board and Director of Planning & Development

T. Haeuser said the first special meeting of the Bike/Ped Committee is October 11th at 7:30 a.m. in his office.

K. Carr said they are aiming for a Planning Board retreat on November 28th. Mr. Haeuser sent out a request for ideas and there have been some great ones. He hopes everyone is available that evening.

A. Dowling said there is a Focus Maine presentation on Wednesday, October 18th at 7 p.m. in the South Portland Community Center. Mike DUBYAK, the Chairman of WEX and co-chair of Focus Maine, will speak about their program promoting economic development in the state.

W. Laidley said the legal program presentation was excellent. It was well attended and worth going to. In another two years they will present again.

K. Carr thanked those who attended for sharing their materials.

Item #6. Adjournment

8:00 pm L. Boudreau motioned to adjourn. K. Gatti seconded; (7-0).

Please Note: No new agenda items will be begun after 11:00 p.m. If during the course of a Planning Board meeting it becomes apparent that the Board will not reach certain agenda items, the Board may, prior to its 11:00 p.m. cut-off, offer to the proponents of such items the opportunity to have their items tabled immediately to the beginning of the next regularly scheduled meeting. Agenda items remaining after the 11:00 p.m. cut-off time will automatically be tabled to the next regularly scheduled meeting.