



PLANNING BOARD
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MINUTES OF THE PLANNING BOARD

Thursday, February 15, 2024 – 6:30 p.m. – Town Hall Conference Room

Members Present: Bob Dion, Phil Dion, John McDevitt, David Moore, Stephan Toth, Steve Smith (Selectmen's Rep), Stu Gerome (Alternate)

Members Absent: Steve Gerrato, Frank Catapano (Alternate), Catie Medeiros (Alternate), Richard Winsor (Alternate)

Staff Present: Mark Fougere

B. Dion opened the Planning Board public hearing at 6:30 pm. He announced a quorum was present and the meeting was being recorded.

MOTION: J. McDevitt moved to appoint S. Gerome as a voting member for this meeting, replacing S. Gerrato. Second – S. Smith; all in favor. MOTION CARRIED

1. Projects of Regional Impact

There were no projects of regional impact.

2. Subdivision of Land, Conditional Use Permit
125 Dearborn Road (Map R12, 12: Residential Zone)
Owner/Applicant: Jay Lajeunesse - Dearborn Woods, LLC
The owner/applicant proposes to subdivide approximately 22.12 acres into a 13-lot residential subdivision. This will be a conventional subdivision with 11 single family homes and two duplex lots. The proposed road will be off Dearborn Road.

A request for a continuance to the meeting on Thursday, March 21, 2024, was received for 125 Dearborn Road.

MOTION: J. McDevitt moved to table the Subdivision of Land, Conditional Use Permit for 125 Dearborn Road, to the meeting on Thursday, March 21, 2024. Second – D. Moore; all in favor. MOTION CARRIED

3. Site Plan Review
1419 Greenland Road (R21, 46 – Commercial C Zone, Telecom District)
Applicant: Atlantic Tower LLC
Owner: Wakefield Investments
The owner and applicant are proposing a wireless communication facility which consists of a 100-foot tower designed to accommodate four wireless providers. The tower will be located within a compound surrounded by a 6-foot chain-link fence, which will be set back from the public right-of-way.

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Christopher Swiniarski, Attorney – Devine Millimet and representing Atlantic Tower, addressed the Board. Brandon Gill, Atlantic Tower, was also present. A wireless communication facility with a 100-foot tower was proposed for 1419 Greenland Road. The property is located in the Town's Telecommunication overlay district. At the January 18th Planning Board meeting, the applicant was asked to make revisions to the site plan: fencing as required by the Zoning Board has been added to the revised plan; the wetlands delineation has been altered to add the specific delineation and the 75-foot buffer removed, which is not applicable (there is no longer anything in the applicable buffers); the 12x20 turnaround location that slightly encroached on the 50-foot buffer has been reduced to 12x18.

Unitil contacted the Town regarding the proposed cell tower (copy on file): they are entitled to a 180-day notice because there is an inter-state gas line. The applicant was happy to comply with the condition that Unitil signs off. Attorney Swiniarski explained that Unitil is entitled, under State law, to be notified of anything within 1,000-feet of an interstate as pipeline. The applicant was unaware there was an interstate pipeline. Unitil is entitled to notice either when the application is submitted or 180 days before construction begins. Federal law allows a 150-day application process for towers. The first application was submitted on September 27, 2023; 150 days would be February 20, 2024. The applicant will work with Unitil to resolve the issues. S. Smith clarified that the project is in the right-of-way but not on the pipeline; the access would cross over the pipeline.

J. McDevitt asked M. Fougere if he had confirmed the location of the Portsmouth water and sewer line. M. Fougere stated they are behind the site, behind the gas company and across the gas company's site towards Portsmouth. The lines are not in the front. M. Fougere noted that Dig Safe will flag everything.

S. Toth stated that access to AmeriGas was reinforced, but he was concerned that if a new outlet was added over the pipe, the machinery going over the driveway may add too much weight and may have to be reinforced. D. Moore commented that it goes under the train tracks. S. Toth was concerned about specific sections being reinforced and others not. B. Gill noted that if reinforcement was a Unitil requirement, it would be done.

B. Dion opened the hearing to public comments, noting they were restricted to 3 minutes and must be related to the topic being discussed. There being no comments, B. Dion closed the public hearing and returned to the Board.

MOTION: S. Smith moved to approve the Site Plan Review for 1419 Greenland Road (R21, 46 – Commercial C Zone, Telecom District), according to the plan submitted by Atlantic Tower, Project No. 2023-0079, dated September 26, 2023, with the following conditions: the wetlands be clearly flagged prior to vegetation removal; obtaining a NH DOT driveway permit; the stipulation from Unitil be added: The applicant is required to consult with Unitil Service Corp. regarding the integrity of their 10-inch diameter gas transmission pipeline located on Rt. 33, and that any improvements that Unitil deems necessary for the integrity of the pipeline are completed, and that Unitil notifies their approval to the Town in writing. **This plan is consistent with the Town's Site Plan Review Regulations and Zoning Ordinance.** Second – P. Dion; six in favor, one abstained (S. Gerome). MOTION CARRIED

4. Wetlands Conditional Use Permit

12 Liams Court (R13, 33D: Residential Zone)

Owner/Applicant: Kimberly K. Gerrish Revocable Living Trust

The owner/applicant is proposing to construct a tidal docking structure consisting of an access way, fixed wood pier, gangway and float supported by moorings and chains.

Sam Hayden, Ambit Engineering/Haley Ward, addressed the Board. They have requested a Wetlands Conditional Use Permit and waiver from the stormwater management plan for the proposed tidal docking structure at 12 Liams Court. The nature of the construction will not impact the site's ability to handle or manage the existing stormwater.

A seasonal tidal dock on Great Bay is proposed. S. Hayden pointed out the mean high-water mark and the delineated highest durable tide line on the landward jurisdictional boundary of Great Bay on the plan. He noted there are two freshwater wetlands on the property on two sides of an upland. On the southern portion of the site there are railroad tracks.

The proposed dock will extend into the Bay. Due to property line setbacks and upland portions of the site, there is only one location that would minimize the impact on resources; S. Hayden pointed out the location on the plan. The float will be located in an area where there is no tidal marsh. A 4-foot wide by 60-foot-long fixed pier supported on driven piles is proposed. There will be a 4-foot by 20-foot accessway to reach it from the uplands, a 3-foot by 36-foot gangway down to the float which is 10-feet by 20-feet. The float will be stabilized by chains and moorings to allow it to float up on the tide.

Mean low low was pointed out. At low tide the area is dry. The dock will settle down onto float stops, which will support it off the intertidal substrate. S. Hayden explained the lowest elevation shown is 1-foot above mean low low.

S. Hayden explained that the dock will be built off a floating barge. The barge will float into the site with materials on board. At low tide it will settle down onto the substrate. A crane will pick up the piles and set them upright. Using vibration, they will be vibrated down into the sediment. The contractor has a tool allowing him to measure the resistance of the post to uplift and make sure it met specifications. Each post takes approximately 10 minutes to set in place under normal conditions. Once level, a header is put on and the remainder of the pier is constructed. S. Hayden noted that there is a DES requirement that the pier is 1-foot above the substrate for every foot of width. They are more than 4-feet above the substrate, allowing incidental light on the salt marsh underneath it.

As part of the DES application process, sea level rise had to be considered and is shown on the plans. S. Hayden discussed those levels. The projected sea level rise by year 2100 is 11.43 feet. The line is lower than the height of the dock, which is not considered a major impediment to the life span of the dock. HOT is the 'highest observable tideline' and is the jurisdictional boundary.

MOTION: S. Toth moved to accept the application for 12 Liams Court (R13, 33D: Residential Zone) as complete. Second – S. Smith; all in favor. MOTION CARRIED

S. Toth questioned if the wooden foot bridge was pre-existing and if there would be a gravel path to dock. S. Hayden stated that there is currently a maintained lawn. The foot bridges allow neighbors to walk up and down the shoreline. S. Smith commented that the foot bridges were put in when the original houses were built.

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S. Hayden, responding to D. Moore's question, stated there were no plans for formal walkways to the dock. J. McDevitt questioned the material used for the pilings. S. Hayden stated that pressure-treated southern yellow pine will be used and is a treatment approved by DES. Responding to D. Moore, S. Hayden stated that the float and ramp will be removed during the non-boating season, between November and the end of May/early June. S. Hayden, responding to P. Dion, stated that the float and gangway will be removed in the winter to prevent damage due to storms and ice. The gangway will be pulled onto the pier or stored elsewhere. B. Dion clarified that there is no residence on this property and that it was for recreational purposes only and not commercial use to rent boats. S. Hayden explained that the landowner owns the adjoining parcel. They access the property by crossing the railroad tracks to maintain the area. There will not be an access road for vehicles. S. Hayden was unsure of the number of boats that could be docked at this location; they had to fit around a 10-foot by 20-foot dock. Boats are only moored at the float due to possible damage if tied to the pier. There is no tree removal in that area. M. Fougere stated there is a 50-foot setback for structures and would require a separate permit. Marsh grass cannot be mowed. M. Fougere added that a State permit is needed to mow marsh grass. S. Hayden stated that the other dock on the agenda would be over 1,000-feet away.

B. Dion opened the hearing to public comments, noting the time limit was three-minutes and must be pertinent to the topic being discussed. There being no comments, B. Dion closed the public hearing and returned to the Board for further discussion.

Waiver: S. Hayden explained that the Town required anyone seeking a Conditional Use Permit to provide a construction stormwater management plan. During construction the ground would not be disturbed; posts would be set using vibration, disturbing almost no sediment. The pier construction will not change the landscape capacity to manage the stormwater as it currently exists. The decking for the accessway and fixed pier is a standard pressure-treated deck so water can flow through it; there will not be a road that will dam up the land behind it; large amounts of land will not be opened up with heavy machinery.

MOTION: D. Moore moved to waive the Zoning Ordinance requirement from Article XVIII – Wetlands Protection Ordinance, Section 18.6 – Conditional Uses, Subsection 18.6.2 – Conditions, Item 'H' – requiring a stormwater management plan. The nature of the dock construction will not impact the site's ability to handle or manage the existing stormwater. Second – J. McDevitt; all in favor. MOTION CARRIED

MOTION: S. Smith moved to approve the Wetlands Conditional Use Permit for 12 Liams Court (R13, 33D: Residential Zone), according to the plan submitted by Ambit Engineering, Project No. 5010180.3402.39, dated October 2023, with the following condition: DES Permit approval. **This plan is consistent with the Town's Site Plan Review Regulations and Zoning Ordinance.** Second – S. Toth; all in favor. MOTION CARRIED

5. Wetlands Conditional Use Permit
36 Waters Edge (R13, 22: Residential Zone)
Owner/Applicant: Marilyn Page Revocable Living Trust
The owner/applicant is proposing to construct a tidal docking structure consisting of an access way, fixed wood pier, gangway and float supported by a combination of standard moorings and chains, and Eco moorings.

Sam Hayden, Ambit Engineering/Haley Ward, addressed the Board. Also present were Glenn and Marilyn Page, property owners. A Wetlands Conditional Use Permit and waiver from the stormwater

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management plan for the proposed tidal docking structure at 36 Waters Edge has been requested. This dock is similar to that of 12 Liams Court, there is a salt marsh on this site, and the upland has a prominent peninsula high feature which will be utilized to minimize the impact to the salt marsh. The float will be placed beyond the salt marsh. Construction will be similar to 12 Liams Court with a tidal dock and float stops will have supports on chains. An 'elastic' type mooring will be used, allowing the mooring to be placed closer to the float and out of the salt marsh.

The proposed pier is 4-feet by 16-feet; the gangway will be 3-feet by 50-feet. The 10-foot by 20-foot float will be supported by a combination of standard moorings and chains. The 4-foot by 16-foot accessway allows movement from the upland to the dock.

MOTION: S. Toth moved to accept the application for 36 Waters Edge (R13, 22: Residential Zone) as complete. Second – D. Moore; all in favor. MOTION CARRIED

Responding to P. Dion, S. Hayden stated this is a seasonal dock. B. Dion clarified that this dock was only for residential use and not commercial. S. Toth stated he had less concern with this dock than the previous one due to the location next to the house. Quickly checking 'google maps', he found there were other docks in the area. The location is not out of the ordinary.

B. Dion opened the hearing to public comments. He reminded those present that comments must be three minutes or less and pertinent to the topic being discussed. There being no comments, B. Dion closed the public hearing and returned to the Board for further discussion.

MOTION: D. Moore moved to waive the Zoning Ordinance requirement from Article XVIII – Wetlands Protection Ordinance, Section 18.6 – Conditional Uses, Subsection 18.6.2 – Conditions, Item 'H' – requiring a stormwater management plan. The nature of the dock construction will not impact the site's ability to handle or manage the existing stormwater. Second – J. McDevitt; all in favor. MOTION CARRIED

MOTION: J. McDevitt moved to approve the Wetlands Conditional Use Permit for 36 Waters Edge (R13, 22: Residential Zone), according to the plan submitted by Ambit Engineering, Project No. 5010180.3402.40, dated December 19, 2023, with the following condition: DES Permit approval. **This plan is consistent with the Town's Site Plan Review Regulations and Zoning Ordinance.** Second – D. Moore; all in favor. MOTION CARRIED

6. Approval of Minutes

MOTION: D. Moore moved to approve the minutes of Thursday, January 18, 2024. Second – P. Dion; six in favor, one abstained (S. Gerome). MOTION CARRIED

MOTION: D. Moore moved to approve the minutes of Thursday, February 01, 2024. Second – P. Dion; five in favor, two abstained (S. Smith, S. Gerome). MOTION CARRIED

5. Consent Agenda

There was no Consent Agenda.

6. Other Business

S. Smith updated the Board regarding MACTERIALS, located at 1088 Portsmouth Avenue. An article has been in The Portsmouth Herald about their location on Jones Avenue in Portsmouth. They are looking to do a temporary laydown yard at 1088 Portsmouth Avenue for an upcoming sewer project in Portsmouth. The City of Portsmouth has given its approval to use the Greenland address. S. Smith did not feel this was within the scope of the ZBA approval for 1088 Portsmouth Avenue. The Town Administrator will contact the Portsmouth City Attorney. S. Smith explained that a laydown yard is a storage area for construction material. There will be pipe, manhole covers and concrete work for the City of Portsmouth water separation project. S. Gerome further explained it was being moved out of Portsmouth due to the problems it is creating for people and Portsmouth does not want it there. S. Smith noted that the area Portsmouth used for similar projects was now a skateboard park. Members of the Board mentioned different areas in Portsmouth or on Pease that could be used. D. Moore noted that the cement work has been at the skateboard park area for years.

The Board also discussed the second entrance used by MACTERIALS, which is supposed to be blocked. S. Gerome questioned if the Town's Code Enforcement Officer and Town Engineer should visit the site. S. Smith stated he has spoken to the Code Enforcement Officer, and he is aware of the situation. D. Moore noted that being aware of it and shutting it down were two different things. S. Smith noted that the driveway is on a State road. S. Gerome commented that the site plan approval blocks the accessway. The driveway is a code enforcement violation. Members of the Board noted that 1088 Portsmouth Avenue has been out of compliance for a long time. D. Moore questioned why the Selectmen have jurisdiction over code enforcement. M. Fougere responded that it was by State statute. Once the project is approved, code enforcement goes to the Selectmen. If a site plan has been approved and is in violation, the Planning Board may request a citation be given to the owner; the Planning Board may also revoke a site plan if it is not being followed. Day-to-day violations are done by Code Enforcement.

S. Gerome asked if Eric Weinrieb, Altus Engineering, should look at the site again due to the technical aspects of the property: the square yardage of material being stored. The allowances in the Variance were strict and was a Code Enforcement issue.

The ZBA and Site Plan approvals will be reviewed at the work session on Thursday, March 07th. J. McDevitt stated that both should be given to the Code Enforcement Officer. It could possibly be back before the Planning Board as a violation of the Site Plan approval. S. Smith will contact E. Weinrieb about a site visit. J. McDevitt recommended speaking to Code Enforcement and the Board of Selectmen. B. Dion recommended waiting until the Town Administrator contacts the Portsmouth City Attorney about the laydown yard. D. Moore noted they are still using an entrance that should not be used and he wanted it closed.

7. Work Session: Thursday, March 07, 2024

- M. Fougere will not be at the work session.
- The MS-4 Stormwater Control Standards will be discussed at the work session; M. Fougere will be meeting with E. Weinrieb to discuss the MS-4.
- ZBA and Site Plan approvals for 1088 Portsmouth Avenue.
- Electric Vehicle Charging Infrastructure.
- Subdivision amendments.

DRAFT: SUBJECT TO CHANGE

8. Adjournment

MOTION: S. Smith moved to adjourn at 7:22 p.m. Second – D. Moore; all in favor. MOTION CARRIED

NEXT MEETING

Thursday, March 07, 2024 – 6:30 p.m., Town Hall Conference Room

Submitted By: Charlotte Hussey, Administrative Assistant