



TOWN OF PORTSMOUTH PLANNING BOARD

2200 East Main Road
Portsmouth, RI 02871
401-683-3717

PORTSMOUTH PLANNING BOARD Regular Meeting April 13 2016

Members Present: Guy Bissonnette, Ryan Tibbetts, Kathleen Wilson, Luke Harding, Michael James and David Garceau.

Members Absent: Edward Lopes

Others Present: Leon Lesinski, Administrative Officer, Portsmouth Planning Board, Atty. Kevin Gavin, Portsmouth Town Solicitor.

The Meeting was called to order by Mr. Bissonnette at 7:00 p.m.

1. Agenda Continuances/Modifications: As follows.

Agenda item #3: Northern Waterfront Associates, LP, AP 16, Lot 37, AP 17, lots 8 & 9, AP 22, lots 2, 3, 4 & 10, AP 23, lots 18 & 19 (The Newport Beach Club) discuss the completion of Mare Terrace and update status on the construction of The Newport Beach Club. Mr. Lesinski reported that the petitioner requested a continuance and is awaiting approval of the easement documents submitted to the town solicitor.

MOTION: Ms. Wilson made a motion, seconded by Mr. Harding, to continue Northern Waterfront Associates, LP, AP 16, Lot 37, AP 17, lots 8 & 9, AP 22, lots 2, 3, 4 & 10, AP 23, lots 18 & 19 (The Newport Beach Club) to the May 11, 2016 regular meeting. All in favor. So voted.

2. Minutes for Planning Board Meeting of March 9, 2016

MOTION: Mr. Harding made a motion, seconded by Mr. Garceau to approve the minutes of the regular meeting, March 9, 2016. All in favor. So voted.

3. Agenda item # 4 Reed Development Corp., AP 57, lot 31 (Lilac Lane extension) – Discuss completion of construction and acceptance of Lilac Lane extension.

Mr. Lesinski stated that the monuments had to be installed and he is awaiting receipt of the as-built plans from the engineer. He suggested the Planning Board continue the matter and he would follow up with the applicant.

MOTION: Mr. Harding made a motion, seconded by Ms. Wilson, to continue Reed Development Corp., AP 57, lot 31 (Lilac Lane extension) to the May 11,

2016 regular meeting. All in favor. So voted.

4. Agenda item # 5 Kyle Hess (Hog Island, Inc.) AP 69, Lot 172 (Hog Island, Greystone Avenue) – Approval for combined Master/Preliminary/Final Plan Decision for a one-lot subdivision from 172 on Hog Island.

MOTION: Mr. Harding made a motion, seconded by Mr. Tibbitts, to approve the combined Master/Preliminary/Final Plan Decision for Kyle Hess (Hog Island, Inc.) AP 69, Lot 172 (Hog Island, Greystone Avenue) with the following correction: page 1, under “Planning Board members present” strike “Edward Lopes”. All in favor. So voted.

5. Agenda item # 6 Ryan Kirwin, AP 56, Lot 18 (68 Bancroft Drive) – Application for Informational Hearing, Master Plan approval and Advisory Opinion to Zoning Board of Appeal for variance

Atty. Eric Chappell, Chappell & Chappell, 171 Chase Road appeared representing Ryan and Kelli Kirwin for an informational hearing for Master Plan approval and an Advisory Opinion for variance to the Zoning Board of Review for a major subdivision on Bancroft Drive. The plan indicates 3 residential lots, (two new lots and one existing) on 4.8 acres. He stated that he submitted the application and checklist to Mr. Lesinski. He noted that he expanded the notification list of abutters beyond the direct abutters referenced on the plan to include all owners within 200 feet of the site. This includes the City of Newport. He has not heard back from any party on the expanded list. The notices were dated March 23, 2016. Mr. Chappell noted that a second public notice was sent to the same list of abutters for a variance hearing with the Zoning Board of Review.

MOTION: Mr. James made a motion, seconded by Ms. Wilson, to accept Matthew J. Viana, P.E., Millstone Engineering, P.C., 250 Centerville Road, Warwick, RI as an expert in the field of civil engineering. All in favor. So voted.

Mr. Viana explained that Lot 18, located at the end of Bancroft Drive, is a 4.8-acre parcel, with grassy features, moderately sloping from the southeast to the northwest toward the Lawton Valley Reservoir. The south and east sides of the perimeter features stone walls and the only wooded growth on the site. The north and northwest sides of the perimeter abut the Narragansett Electric pole line, which abuts the reservoir. The existing 3-bedroom home is serviced by public water, overhead power and one of the first septic systems approved by RIDEM. A new bottomless sand filter, advanced treatment septic system is approved by RIDEM. Mr. Viana stated that soil tests reveal an 18-inch water table and Newport soils. The proposed plan indicates a three lot subdivision, lots 1 & 2 and the remaining portion of lot 18 upon which the existing house is located. The lots meet the standards for area and setback in R30 zoning. A considerable portion of lot 1 and a smaller portion of lot 18 are zoned R60 pursuant to the Zoning Ordinance that requires that land within 500 feet of the

reservoir be zoned as such. Lot 1 requires variance for frontage. Mr. Viana noted that the requirements of the Portsmouth Water and Fire District and the Portsmouth Fire Department determined the lot layout. The plan indicates that Bancroft Drive is "extended" onto the property, ending in a cul-de-sac with a 45-foot radius as required by the fire department. The plan indicates that the water line main extension will come from the Peaceful Way subdivision onto the site and then loop onto Bancroft Drive. Utility lines are underground. Mr. Viana noted that the existing drainage system captures a fair amount of drainage from Bancroft Drive and discharges to the middle of the site. He anticipates that a new system, though not yet designed, collects the run-off, piping it past the access points to the three lots to a low impact development grass swale for water quality treatment and then into a larger, low profile, flat area that will infiltrate run-off for 100 year storms. Mr. Viana noted that because the site is within the watershed overlay district, the low impact plan minimizes impervious surfaces and features roof systems that capture storm water in underground chamber systems. The requested variance for frontage for lot 1 supports the low impact measure to minimize paved road surface, which is limited to the proposed cul-de-sac. Mr. Viana noted that the frontage for lot 18, in the proposed state, is increased from 50 to 115 feet, which is still below the standard but represents an improvement of a substandard lot. Atty. Chappell explained that the new layout for lot 18 meets the Zoning and Planning standard for R30 pursuant to a provision, which allows the frontage to be determined at the 30-foot front yard setback.

Atty. Chappell agreed to have the following letters entered into the record: Andrew L. White, Fire Marshal, Portsmouth Fire Department to Portsmouth Planning Board, April, 6, 2016; Robert C. Schultz, Jr., PE, PLS, Deputy Director of Engineering, Department of Utilities, City of Newport, to Gary Crosby, Town Planner, Town of Portsmouth, April 8, 2016; and William J. McGlenn, PE, General Manager and Chief Engineer, Portsmouth Water and Fire District, to Leon C. Lesinski, Administrative Officer, Portsmouth Planning Board, April 7, 2016.

In response to Ms. Wilson, Mr. Viana confirmed that the plan and subdivision documents have an easement for the proposed 385 foot drainage pipe and the large drainage area on to the northwest which abuts lot 1 and the electric pole line. Atty. Chappell noted that the homeowners association agreement stipulates owner maintenance of the drainage easement and allows the town to enter onto the easement for inspection and repair if the homeowners association fails to do so. The agreement has a maintenance plan for the drainage easement. Atty. Chappell noted that sheet 5 of the plan indicates a future lot abutting lot 18 to the northwest and that the proposed plan supports this future subdivision. Mr. Bissonnette called for public comment.

Alice Smith, 42 Bancroft Drive inquired as to whether or not the petitioner would have to repeat the subdivision approval process for the future fourth lot. Mr. Bissonnette stated that the fourth lot request would constitute another application subject to the approval process. Atty. Chappell explained that Kirwin's requested

that the subdivision be “over designed” to accommodate the fourth residential lot in the event that they would choose to subdivide again in the future. Ms. Smith inquired about the dust and dirt associated with construction and whether or not the petitioner would assume the cost of cleaning other properties in the area. Atty. Chappell explained that the low-impact design of the plan minimizes the road construction and that the typical southwest winds in the area should help limit dust to the Bancroft Road properties. In response to Ms. Smith, Atty. Chappell explained the process by which the town would assume ownership of the cul-de-sac. Ms. Smith expressed her concern for the deteriorating condition of Bancroft Drive and the further stress associated with construction traffic to the site. Atty. Chappell cited a Supreme Court Case, which ruled that the petitioner cannot be held to repair a public road that may be impacted by subdivision construction. Mr. Bissonnette suggested that Ms. Smith bring her concerns to the town administrator. Atty. Gavin commented that the Town Council heard a presentation on the road program in the previous week.

George Nichols, 451 Union Street, abutter to the northeast and downgrade of the site expressed concerns for run off and erosions problems he experiences on his property. He requested that petitioner provide him the drainage plan at the appropriate point in the application process so that he could have it reviewed by a professional engineer. He inquired about retention of the foliage along the shared northeast property line. Atty. Chappell explained that according to regulation, the plan must minimize vegetative loss in a watershed protection area. Mr. Bissonnette explained that the petitioner presents the drainage plan and details at the preliminary approval phase after master plan approval. Atty. Chappell noted that the abutters will receive notice of the preliminary hearing and he agreed to provide Mr. Nichols a copy of the plan. Mr. Bissonnette emphasized that the law does not allow a subdivision design to increase run-off from a proposed site.

Ryan Kirwin, petitioner, 68 Bancroft Drive agreed to provide the engineering documents to Mr. Nichols and expressed his intention to maintain the existing vegetation. Mr. Bissonnette closed the public comment portion of the hearing.

MOTION: Mr. Harding made a motion, seconded by Ms. Wilson, to make a favorable recommendation for frontage variance for lot 1 to the Zoning Board of Review, acknowledging that pursuant to the Zoning Ordinance, frontage for lot 18 is met at the 30 foot setback line, and further to make Master Plan approval for Ryan Kirwin, AP 56, Lot 18 (68 Bancroft Drive). All in favor. So voted.

6. Agenda item # 7 Apollo Brothers, LLC, AP 24, lot 11 (Sea Fare Residences Condominium, 3352 East Main Road) – Approve the decision for a second modification to the Final Plan to alter buildings 10, 11, 12 & 13 to allow for a first floor master bedroom and a revised Landscape Plan

MOTION: Ms. Wilson made a motion, seconded by Mr. Garceau, to approve the

combined the decision for a second modification to the Final Plan to alter buildings 10, 11, 12 & 13 to allow for a first floor master bedroom and a revised Landscape Plan. The motion was carried, 4 votes approving. Mr. Bissonnette abstaining.

7. Agenda item # 8 Middle Creek Farm, LLC, AP 68, lot 71 and AP 128, lot 73 (Middletown), 116 Cornelius Drive. Application for Final Plan approval for an 11 lot Major Subdivision.

Atty. Neil Galvin, Corcoran, Peckham, Hayes & Galvin, P.C., Newport RI appeared representing Middle Creek Farm, LLC with a request for final plan approval for an 11 lot subdivision on Cornelius Drive. The Planning Board rendered master and preliminary approvals in 2015 for a plan that indicated a primary private roadway. Atty. Galvin explained that in the course of discussions between himself, Mr. Lesinski and Atty. Gavin, they determined the Planning Board did not have the authority to approve the private road because the application was not heard pursuant to regulations for open space residential development, Planned Unit Development (PUD) or road abandonment. He announced that the petitioner is going forward with a traditional residential subdivision development application with a public road. The subdivision is no longer proposed as gated. The engineering and elements remain as presented under the previous approvals. The plat restrictions are modified to remove the reference to a private road. Atty. Gavin also explained that the homeowners association agreement places responsibility for the drainage system maintenance with the owners but that the town has the right by easement to access the system for inspection and repair in a failure event. He stated that the Middletown Planning Board granted final plan approval earlier in the evening.

Mr. Bissonnette stated for the record that Lyn Small, PE, Northeast Engineers & Consultants, Inc., Middletown, RI, project engineer has been previously qualified by the Planning Board to testify on the application. Indicating the modifications regarding the road status change, Atty. Galvin presented Atty. Gavin the revised homeowners association agreement for review. With regard to the Middletown approval, Atty. Galvin stated that he apprised the Middletown Planning Board of the road status change prior to the approval. The Middletown Planning Board requires assurance from Portsmouth that Portsmouth DPW is conducting regular service and maintenance to the small portion of the road that is situated in Middletown. Atty. Galvin stated that he has spoken with Dave Kehew, Director, Portsmouth DPW to that effect.

Referring to the northwest section of the subdivision site, Atty. Galvin explained that this piece of land has no connection to the 11-lot subdivision and will be administratively added to an abutting parcel to the south, which is located in Middletown and has frontage on Peckham Road. The northwest section does not have appropriate frontage in Portsmouth. Atty. Galvin explained that under a provision in the Zoning Ordinance, when there is a piece of property that combines land in both neighboring communities, it is viewed as a whole to

ensure full compliance and appropriate frontage. Atty. Galvin noted that the conditions set forth under master and preliminary approvals remain the same with the exception of # 5 under the master plan decision and carried over to the preliminary decision. Condition #5, which stipulates the placement of the gate for the private road, is eliminated because it is no longer applicable. Atty. Galvin reviewed the approval condition regarding water service. He explained that if the City of Newport and the Portsmouth Water and Fire District cannot come to an agreement that results in Portsmouth providing water service to the development, then the lots will be serviced by individual wells and the homes will have sprinkler systems as required by the Portsmouth Fire Department. Atty. Galvin noted he presented a draft agreement pertaining to water service to City of Newport officials.

In response to Ms. Wilson, Atty. Galvin confirmed that all elements of the drainage system are maintained by the homeowners according to the maintenance easement and the homeowners association agreement. In the event of a failure, the town, by easement, can make repairs and charge the cost to the homeowners. Mr. Bissonnette called for public comment to which there was none.

MOTION: Ms. Wilson made a motion, seconded by Mr. Tibbitts to make final plan approval for Middle Creek Farm, LLC, AP 68, lot 71 and AP 128, lot 73 (Middletown), 116 Cornelius Drive with the acknowledgement that the road is now public and not private and that master plan approval condition # 5 is eliminated. All in favor. So voted.

MOTION: Ms. Wilson made a motion, seconded by Mr. Tibbitts, to amend the previous motion to set the road bond for Middle Creek Farm, LLC, AP 68, lot 71 and AP 128, lot 73 (Middletown), 116 Cornelius Drive in the amount of \$650,000.00 to be reduced by whatever portion is equitably applicable to the Town of Middletown with security satisfactory to the town solicitor. All in favor. So voted.

Mr. Bissonnette called for a vote on the first motion as amended. All in favor. So voted.

8. Agenda item # 9, Discuss Aquidneck Island Planning Commission (AIPC) and report of AIPC activities

Ms. Wilson reported on the recent activities of the AIPC with updates on membership, staff and projects. She announced that the AIPC has a new location on John Clarke Road, Middletown, RI. Tom Ardito, Executive Director, AIPC directed the board members to speak with town-wide officials to identify areas of improvement to the towns. The AIPC presented its vision plan to in Middletown the previous evening. Mr. Tibbitts noted that the Navy community planning liason official position is vacant. He agreed to find out when the position will be filled.

9. Agenda item # 10, Discuss the subdivision regulations regarding the Town's ability to oversee the completion and acceptance of public improvements such as public roads and the inclusion of a note regarding the "Release of Lot" form on the Subdivision plan

The Planning Board members and Atty. Gavin discussed how town officials should enforce the regulation by ensuring submission of the Release of Lot form by developers prior to issuance of building permits. Mr. Lesinski noted that historically this process is not being followed resulting in a lack of completion of subdivision roads. Mr. Bissonnette directed Mr. Lesinski to draft a letter to the town administrator explaining the issue and requesting enforcement of the process as required by the regulation. The Board will review the draft at the May 11 meeting.

10. Agenda item #11, Approve Monthly Project Status Reports, Administrative Subdivisions and Plat Plan Recording

Mr. Lesinski presented Monthly Project Status Reports, Administrative Subdivisions and Plat Plan Recording, April 13, 2016.

MOTION: Ms. Wilson made a motion, seconded by Mr. Harding to accept the Portsmouth Planning Board Monthly Project Status Reports, Administrative Subdivisions and Plat Plan Filings, April 13, 2016 and to place it into the record. All in favor. So voted.

At 8:17 p.m., a motion was duly made and seconded to adjourn the meeting. All in favor. So voted.

Respectfully submitted:
Dede Walsh
Recording Secretary for:

Leon Lesinski
Administrative Officer