

**MINUTES
HISTORIC DISTRICT COMMISSION
ONE JUNKINS AVENUE, PORTSMOUTH, NEW HAMPSHIRE**

EILEEN DONDERO FOLEY COUNCIL CHAMBERS

6:30 p.m.

**February 8, 2017
reconvened from February 1, 2017**

MEMBERS PRESENT: Chairman Vincent Lombardi; Vice Chairman Jon Wyckoff; Members Dan Rawling, Reagan Ruedig, Richard Shea, John Mayer; City Council Representative Nancy Pearson; Alternate Martin Ryan

MEMBERS EXCUSED: Alternate Molly Bolster

ALSO PRESENT: Nick Cracknell, Principal Planner

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I. CONFLICT OF INTEREST PRESENTATION – City Attorney Robert Sullivan

City Attorney Robert Sullivan gave a brief Conflict-of-Interest presentation to the Commission at the conference table. He said the City Manager determined that it would be a good idea for him to discuss conflicts of interest with all the Portsmouth regulatory boards for both practical and philosophical reasons. He said that the practical reason related to whether or not any Board member acted in violation of ethical rules or conflict of interest and because a decision could get overturned by someone else because of that violation, so the practical thing was to stay within the rules and ensure the integrity of the Board’s decision. He said that the philosophical reason was having a good City government like Portsmouth doing everything the best that they could. He said that land use boards told people what they could and could not do, and exercising that power had to be done in a way that the City could be proud of and could not be accused of not doing their job in accordance with the law and the expectations of the citizens.

Attorney Sullivan read the City Charter provision stating that the City Council shall “have the power to remove, censor, suspend, or reprimand any member of the Counsel or any Council appointee who has been found by it to have violated any provisions of a municipal code of ethics which shall be adopted by the Council in the form of an ordinance”. Attorney Sullivan emphasized that any board member or City employee could lose their jobs and that the City Council had adopted an ordinance that was a code of ethics which the municipal officials had to follow. He also read a State Statute that stated that no member of a zoning board of adjustment, including the HDC, would participate in deciding or would sit upon the hearing of any question in which the Board was to decide in a judicial capacity, especially if that member had a direct, personal or pecuniary interest in the outcome that differed from the interests of other citizens, or if that member could be disqualified in any cause to act as a juror in a trial matter.

Attorney Sullivan concluded that if a Board member had a connection to anything in a judicial capacity, he or she should recuse themselves. He said there were two types of decisions, judicial capacity and legislative, and that the Commission's job was to find facts, apply them to existing law, and call them. He said that people who made legislative decisions were elected by voters because of their predispositions that the voters liked, so they were not expected to act like judges. Because of that distinction, he said there was a different standard that applied in the code of ethics. He stated that the judicial standard was the higher of the two and applied to the HDC.

Attorney Sullivan described the process of deciding conflict-of-interest questions, saying that the affected Commissioner made the decision. The chairman or the rest of the Board could not decide but could offer an advisory opinion. He said that if the Commissioners made the wrong decision, it could jeopardize the decision of the whole Board, so if there was any doubt, the Commissioner should recuse himself or herself to avoid problems.

Attorney Sullivan noted the amount of publicity and controversy that the Harborcorp incident caused created the perception that the Commission was not fair and balanced in making a quasi-judicial decision, thereby violating the City's Code of Ethics. As a result, he said that he and the mayor reviewed each code of ethics and wrote a detailed analysis of why they felt that the Code of Ethics was not violated. Attorney Sullivan said it was acceptable to talk to Mr. Cracknell for help in analyzing decisions but it was important to keep in mind that, until the close of the public hearing, everyone had to be neutral in the decision that had to be made, and that what was given to one person had to be given to all. He said that draft decisions should not be given to anyone.

Vice-Chair Wyckoff asked whether the Commissioners could discuss amongst themselves upcoming or approved petitions. Attorney Sullivan said it was the right to know and said some level of conversation was permissible but not the ultimate decision.

Mr. Mayer asked whether the City had an annual statement that Board members signed to acknowledge that they had reviewed the conflict-of-interest provision and accepted the standards. Attorney Sullivan said the City did not but thought it was a good idea.

Mr. Shea said he had done projects for neighbors and had recused himself, and he asked whether he needed to recuse for the entire evening. Attorney Sullivan said that the law didn't require it but recommended that Mr. Shea recuse himself for the entire meeting because if a citizen in the audience saw Mr. Shea represent an applicant who got an approval, and another applicant didn't, it would look bad. Mr. Shea said he lived in the Historic District and recused himself when close neighbors had petitions, and he asked how far that would extend without appearing to be a conflict. Attorney Sullivan said that the further away Mr. Shea was from a close neighbor, the less he was required to recuse himself. He told him to use his own judgment.

Mr. Rawling noted that a lot of people in the City knew each other but didn't have a close relationship. Attorney Sullivan advised applying the test of how it would look to someone who didn't know anyone on the Board or how it would look on the front page of the Portsmouth Herald. He said it should be avoided. Mr. Rawling said the Commission was often called upon to allow one structure where only another type of structure was allowed. Attorney Sullivan said the Commissioner had to be objective and explain the decision at the time it was made after the

public hearing and also reference the applicable ordinance, which was important if the decision was appealed and the meeting record went to the judge.

Mr. Rawling asked whether sketches drawn by a Commissioner of a suggested design for the applicant were allowed. Attorney Sullivan said he thought they were allowed but felt that they should be made part of the record and that the Ordinance be considered.

Vice-Chair Wyckoff asked how legal work sessions were. Attorney Sullivan said they were meetings but that the Commission was not supposed to make final decisions.

Chairman Lombardi asked Attorney Sullivan whether the Commission should meet with him again to discuss additional information, and Attorney Sullivan agreed and also noted that he and Mr. Cracknell saw one another daily and discussed problematic issues.

II. REQUEST FOR ONE-YEAR EXTENSION OF CERTIFICATE OF APPROVAL –

Requested by 121/123 State Street Condominium Association, Mark Bodi, President, granted on March 2, 2016.

Chairman Lombardi stated that the extension had been approved at the previous meeting.

III. ADMINISTRATIVE APPROVALS

1. 2 Congress Street

Mr. Cracknell stated that the petition was to remove an existing bulletin board and to install two aluminum boards. He asked the applicant to speak to the petition.

North Church member Doug Woodward said they wanted to remove the old sign and replace it with two signs that were more functional.

Mr. Rawling said he was fine with the locations of the signs but felt that a wood frame would be more traditional. Mr. Woodward said he thought the wood would be a maintenance issue. Ms. Ruedig recommended that the signs be mounted through mortar instead of bricks. Mr. Mayer asked whether the signs to the right and left of the doors would remain. Mr. Woodward said only the historic sign on the right would remain.

*Mr. Mayer made a motion to **grant** the Certificate of Approval for the application as presented, and Ms. Ruedig seconded. The motion **passed** by unanimous (7-0) vote.*

IV. WORK SESSIONS – (CONTINUED)

C. Work Session requested by **Thirty Maplewood, LLC, owner**, for property located at

46-64 Maplewood Avenue, wherein permission is requested to allow a new free standing structure (construct new mixed use, 3 to 3 ½ story building) as per plans on file in the Planning Department. Said property is shown on Assessor Plan 125 as Lot 2 and lies within the CD 4, Historic, and Downtown Overlay Districts. *(This applicant has asked to postpone review of the application to the March 2017 meeting.)*

Chairman Lombardi stated that the work session had been postponed to the March meeting.

D. Work Session requested by **Deer Street Associates, owner**, for property located at **165 Deer Street (which has been subdivided into five individual lots)**, wherein permission was requested to allow demolition of existing structures (demolish structures) and allow new free standing structures (construct two new mixed use buildings) as per plans on file in the Planning Department. Said property is shown on Assessor Plan 125 as Lots 17-2 and 17-3 and lies within CD 5, Historic District, and Downtown Overlay Districts.

Chairman Lombardi read the petition into the record. City Councilor Pearson stated that she managed the public art for the garage through her work with Art-Speak and wanted to recuse herself from the vote. She asked whether she could sit in on the discussion.

Chairman Lombardi asked the public whether anyone had objections. Rick Becksted of 1395 Islington Street approached the podium and said he had never heard of such a request.

City Attorney Sullivan recommended that Councilor Pearson not sit at the table but said she could listen as a member of the public.

City Council Representative Pearson recused herself from the petition, and Mr. Martin assumed her voting seat.

Chairman Lombardi stated that it was the second work session and that the general massing was still in review.

The architect Tracy Kozak of JFA Architects was present to speak to the application and introduced associates Mark Moeller and Steve Hesh. Attorney Tim Phoenix was also present.

Ms. Kozak noted that the archeological report was for all five lots but that the application was only for Lots 4 and 5. She reviewed the history of the site, the Deer Street Lots 4 and 5, the vantage points of the buildings, and several options.

Mr. Shea said he thought that the option with the gabled roof structures was reminiscent of the further end of Deer Street. He liked that the rooflines were broken up and thought the gable gave a little relief, and said he was leaning toward that option. He said he liked the courtyard but felt that the elevation massing didn't do much for the railroad side. It was further discussed. Mr. Moeller said that, even with the option with the flat roof, there was a significant amount of surface relief that was addressed at the top floors, like the projecting bays and recession, so it wasn't just a box. Mr. Shea said the gable massing brought the elevation down and was a nice

relief from the rest of the neighborhood that was being built up and related more to the gable forms, the graveyard, and the residential going up Maplewood Avenue.

Vice-Chair Wyckoff said he thought the gable roofs helped with the Maplewood Avenue context. Mr. Rawling agreed and said he liked the courtyard option on the railroad side. He liked Option C, but liked the corner of Option B with the tower. He suggested that Option C have a roof added on the back corner lot to make a tower element.

Mr. Mayer said he appreciated the residential cues and the archeological survey but saw a project built out to the maximum available coverage. He suggested a graduated building toward the elevation so that it was not seen as a solid wall from Maplewood Avenue. He also asked about the walking paths that would be lost due to the development's scale. Ms. Kozak said they had 36 feet of open space between the buildings, were pulling back from lot lines, and were getting away from the downtown urban pattern. She pointed out that it was an industrial area.

Ms. Ruedig said she thought the models were a bit too articulated and would have liked to see them simplified so that the massing could be reviewed without window placements, dormer sheds and so on. She said the Commission had worked hard to put height at the corner of Maplewood Avenue and Deer Street, and she suggested a tower element or an anchor to have it meet the height and scale of the buildings on the other three corners. She also suggested scaling down because she felt it was a stark difference from the cemetery driveway to a 3-1/2 story building. She said that softening the edge toward Maplewood Avenue would help. She said that having the courtyard in the back was the better option because it brought down the scale and height to match the rest of the neighborhood and also continued its quasi-urban feel. Ms. Ruedig said she felt that Options 4A and 4B seemed a bit out of context, even with the sloped roof options. She asked that the Commission be informed about the rest of the project, even though it wasn't in their purview, so that they could understand the context of the buildings.

Ms. Kozak reviewed the context of Buildings 3 and 6 and the parking garage and said they would have more details of the garage at the next work session.

Mr. Rawling noted that Lot 5 had some articulation and accent elements that seemed to interrupt the street wall. He felt that some corners could have more accents, and it was further discussed.

Mr. Shea said he struggled with whether new construction met the HDC guidelines. He felt that some of the gable forms were a mix of the new projects coming in and the historic structures and thought it was a good way to show what the Commission was looking for in the Historic District.

Mr. Ryan said that he felt the project was still within the urban context and suggested that it carry through the densities in the City. He said he liked the large sweeping gesture at the corner but preferred something that stopped the eye instead of a broad urban structure. He said he liked the flat roofs and thought the cascade up the façade was perfect.

Chairman Lombardi said that, since Lot 3 abutted Lot 4, it justified the Commission knowing about Lot 4 as well. He said he found the massing presentation a bit confusing because of the added design elements that were difficult to absorb, and it was further discussed.

Mr. Mayer said he felt that the step-down design in Lot 6 would help soften the north façade of Lot 5 and satisfy some concerns of the guidelines for new construction.

Ms. Ruedig said the back of that building was important because that was what people would see, and she asked that the back corner and the railroad not be the back of the building.

Mr. Rawling discussed the tower element on the corner being the anchor and suggested some accent pieces for the gable forms and Building 3, which he felt would liven up the streetscape.

Vice-Chair Wyckoff said he thought Option B was the better one. He suggested a conical roof for Building 5 to accent the height of the tower. He said he didn't feel that the back of the building facing the tracks was massive at all. He said he was comfortable with the massing, especially if Building 4 was kept story-less, and also felt that the 6-storied parking garage would get over to the larger section and maintain a bit of the Maplewood Avenue context.

Mr. Martin said he thought the Commission was struggling with the scale figure. He asked about the large opening in Building 4. Mr. Moeller said it had a complicated site plan because they were trying to circumnavigate the building with vehicular action.

Mr. Mayer said the drive-through feature was interesting and asked whether there was a way to create a distinctive structure. Mr. Moeller said there was no second floor above the drive-through but that they could shape the opening because they had the room.

Public Comment

Rick Becksted of 1395 Islington Street said that he liked the gables at first but felt that they made the building look like something it wasn't due to the building's massive scale. He noted that the area was zoned for 50-ft buildings and that the structures were all 60-ft buildings. He said he heard that public space would be used to get another floor on Lots 3 and 6 and he referred to the workforce housing developer incentives. Ms. Kozak said that Building 4 was under 50 feet tall and that Building 5 was going for the developer incentive to get the extra story. Mr. Becksted also expressed concern about the CD-5 Zone heights and whether the project would meet workforce housing requirements.

Mr. Cracknell stated that Mr. Becksted's questions were timely and discussed what the CD-5 zone allowed, the workforce housing incentives, the community space requirements, and what the Ordinance allowed. He said that the only requirement was that there be two bedrooms or more to qualify as workforce housing.

Chairman Lombardi asked whether the number of units could be seen as workforce housing and if the Board could weigh that against the height of the building. Mr. Cracknell said that the Commission was a design review board and was concerned more with what was esthetically appropriate for the site rather than what was in it.

Vice-Chair Wyckoff said that if the building didn't qualify as workforce housing, it had to be dropped another story. He noted that people were looking for locations in Portsmouth to put

workforce housing, yet the project was removing two 4-unit buildings of workforce housing and providing five, which he felt wasn't an even trade. He thought it should be equal and that eight units should be provided, if not more.

Kim Rogers stated that he was the company manager for Deer Street Associates. He said that Lot 6 had two duplexes with eight bedrooms and that the buildings weren't really workforce housing because workforce housing was quality housing and not based simply on the number of bedrooms and the rental prices. He said it was a net gain for the City by taking away four units of workforce-priced housing and installing five new units with one or two bedrooms. Mr. Becksted said the units had to have two bedrooms to be based on the standards.

No one else rose to speak, and Chairman Lombardi closed the work session.

DECISION OF THE COMMISSION

*The applicant indicated that they would **return** for another work session.*

E. Work Session requested by **299 Vaughan Street, LLC, owner**, for property located at **299 Vaughan Street**, wherein permission was requested to allow a new free-standing structure (construct mixed use building to include a hotel and associated parking) as per plans on file in the Planning Department. Said property is shown on Assessor Plan 124 as Lot 10 and lies within the CD 5, Historic, and Downtown Overlay Districts.

City Councilor Pearson resumed her voting seat and Mr. Martin returned to alternate status.

Jeff Johnston of Cathartes and Carla Goodknight of CJ Architects were present to speak to the petition. Mr. Johnston said it was a one-building proposal on a one-acre waterfront park. He referred to the North End Vision Plan and the Draft Master Plan and said they intended to use a third of the waterfront park and take advantage of the zoning incentive for the other 2/3 of the property. He said a contemporary 145-room hotel with five floors was planned and that other benefits would include the widening of Green Street, landscaping, and more street activation.

Ms. Goodknight reviewed the site context study, streetscape photos, massing, scaling, and site plan. She said the park would be a community space. She also reviewed the hotel room plans and said there would be a retail component as well as a ground-floor parking garage.

Mr. Mayer asked whether there was dedicated parking space for the public, and Mr. Johnston said there wasn't. Mr. Mayer said it was a concern. Councilor Pearson said she didn't see the park as a destination park. She said there would eventually be opportunities for pedestrians and bicyclists and that future parking would be available. Mr. Cracknell said the park aspect was under the Planning Board's jurisdiction and would be dealt with.

Mr. Rawling said the Commission had to look at the project as part of the first phase of the Master Plan. He noted that they were starting an esplanade across the pond and eventually the

route would be a shoreline one. Vice-Chair Wyckoff asked how one would get from the park to other parks. Mr. Cracknell said the City would negotiate the process. It was further discussed. Chairman Lombardi said he thought the massing presentation was clear and well done. Ms. Ruedig agreed and said she'd like to see the massing a little less articulated. She thought the massing was appropriate because of the way it stepped down to 3S Artspace, and she felt that five stories were appropriate for the area and hoped to see an active sidewalk.

Mr. Rawling said he supported the massing in general and hoped for more articulation in the building volumes as well as skyline elements. He discussed it further.

Mr. Mayer said the project seemed to be cohesive with the surrounding area and was comfortable with the massing. He said he appreciated the alternative means of transportation activating the street and accommodating pedestrians and felt it would benefit the area greatly.

Mr. Martin asked if there was a main entrance to the hotel. Mr. Johnston said the entrance was similar to the Hilton Garden Inn, where one drove under the building to unload luggage and check in, but said they would have an access at the corner of Green and Vaughan Streets.

Mr. Shea said he agreed with Mr. Rawling about trying to break up the big box look. He suggested activating the Vaughan Street side more and said there was precedent for green space. He suggested opening the corner of Vaughan and Green Streets more and softening the corner on the 3S Artspace side. He encouraged that the building relate more to Portsmouth if possible.

Mr. Rawling discussed modulating the volumes and activating the roof.

Public Comment

Rick Becksted of 1395 Islington Street asked whether there was any historical significance when it came to a brick warehouse and whether an architectural dig had taken place. He said the hotel had to complement 3S Artspace and 233 Vaughan and have Portsmouth characteristics.

DECISION OF THE COMMISSION

*The applicant indicated that they would **return** for another work session in March.*

V. ADJOURNMENT

*At 10:15 p.m., it was moved, seconded, and **passed** by unanimous vote (7-0) to adjourn the meeting.*

Respectfully submitted,

Joann Breault
HDC Recording Secretary

These minutes were approved at the Historic District Commission meeting on March 8, 2017.