



City of Auburn, Maine

Office Economic and Community Development

www.auburnmaine.gov | 60 Court Street

Auburn, Maine 04210

207.333.6601

PLANNING BOARD AGENDA

Auburn City Hall, Council Chambers 2nd Floor

Tuesday, September 13, 2016 - 6:00PM

1. ROLL CALL:

2. MINUTES: Approval request for the minutes from the July 12, 2016 meeting.

3. NEW BUSINESS and PUBLIC HEARING:

A. Zoning map amendment for a portion of 1807 Pownal Road, a portion of 1850 Pownal Road, a portion of PID # 021-012, 1890 Pownal Road, 1863 Pownal Road and a portion of PID # 021-012-001 from Agricultural Resource Protection District to Low Density Rural Residential District pursuant to Section 60-1445 Amendments to the Zoning Map. *Proposal was heard and tabled August 9, 2016.*

B. Recommendation to the Council on an amendment to Chapter 60, Article XVI, Division 2, Subdivision 1, Sec. 60-1301(14) pursuant to Chapter 60 Article XVII- Amendments, Division 2- Amendment to the Zoning Map of the Auburn Code of Ordinances. The changes amend references to State Stormwater Standards to allow the City to maintain Delegated Review Authority.

4. OLD BUSINESS:

5. MISCELLANEOUS:

A. Staff updates

6. PUBLIC COMMENT:

7. AJOURNMENT:

Next Planning Board Meeting is on October 11, 2016

Auburn Planning Board Meeting Minutes July 12, 2016

ROLL CALL:

Regular Members present: Ken Bellefleur Presiding, Robert Bowyer, Dan Philbrick, Samuel Scogin and Evan Cyr.

Regular Members absent: Mia Poliquin Pross and Marc Tardif

Associate Members present: Elaine Wickman

Associate Members absent: Nathan Hamlyn

Also present representing City staff: Douglas Greene, City Planner

Chairperson Bellefleur called the meeting to order and stated Elaine Wickman would be acting as a Full member for this meeting. He also stated that Old Business would be covered first.

OLD BUSINESS:

Continuation of a Special Exception and Site Plan Review application for various outdoor recreation activities in the Agricultural and Resource Protection Zone for Lost Valley Management, LLC, at a property located at 150 Lost Valley Road from the June 14 meeting.

Doug Greene presented the Staff Report via PowerPoint.

Mike Gotto who was representing Lost Valley along with the owner, Scott Shanaman added to the presentation and addressed the Planning Board's concerns about vehicular and pedestrian safety.

Open Public Input

A motion was made by Evan Cyr and seconded by Robert Bowyer to close the Public Input part of the hearing. After a vote of 6-0-0, the motion carried.

A discussion ensued about the overflow parking being reclaimed to gravel, having lighting in place where needed and the waiver request for the site plan.

(17:35 on DVD)

A motion was made by Evan Cyr and seconded by Samuel Scogin to approve the waiver request sought by the applicant regarding the site plan noting that the site plan submitted provides adequate information necessary for the Board to evaluate the pedestrian circulation safety concerns that were brought up at the previous meeting. This motion also includes approval of the Special Exception and Site Plan Review for various outdoor recreation activities in the Agricultural and Resource Protection Zone for Lost Valley Management, LLC, at a property located at 150 Lost Valley Road (PID 295-008) pursuant to Chapter 60-145 b, 5, Section 60-1366,

and Section 60-1277, of the Auburn Code of Ordinances with the findings that the applicant meets the conditions of the Special Exception Law and Site Plan Review and pursuant to conditions 1 thru 3 as outlined in the staff report dated July 12, 2016 as well as an additional condition that prior to regular use of the parking lots identified as overflow parking, they be reclaimed to gravel and lighting be installed that which meets the approval of City staff.

After a vote of 6-0-0, the motion carried.

Robert Bowyer commented about the problem with the graphics on the projector screen. He said he simply cannot read most of the drawings that are being presented and suggested that the lighting in the room be adjusted so that what is being projected is readable.

PUBLIC HEARINGS & NEW BUSINESS:

Mike Gotto, of Stoneybrook Consultants, Inc., an agent for Colonial Ridge LLC, is seeking approval of amendment # 3 for the Colonial Ridge Planned Unit Development, located off of East Hard Scrabble Road pursuant to Division 9, Planned Unit Development, Section 60-361 General Standards of the Auburn Code of Ordinance.

Doug went over the staff report and presented slides via PowerPoint.

(31:55 on DVD)

Mike Gotto of Stoneybrook, Consultants, Inc & Kevin Dean of Colonial Ridge, LLC explained the proposal and presented slides via PowerPoint. They answered numerous questions asked by the Board members.

(59:25 on DVD)

Open Public Input

David Baker of 60 Harvest Hill Lane and President of the existing Homeowner's Board at Colonial Ridge said they were in favor of the proposal but had the following 3 concerns:

1. Increased traffic – suggested adding speed ramps on the public road (Harvest Hill Lane)
2. Buffer zone – perhaps trees to show separation between existing homeowner's association boundary line and the new proposed homeowner's association to be set up with the individual houses.
3. Ensure value in existing home – ensure quality homes being built (\$200,000 - \$300,000 value)

Laurie Baker also of 60 Harvest Hill Lane stated the following concerns:

- Many kids in area so suggest having some speed signs put in along with speed ramps
- Develop an overflow parking in new development – trying to discourage parking in the street
- Keeping unity in the look – similar siding so the look continues as it flows into Phase II
- Safety is big issue – Phase I Homeowner's Association has insurance but wondering who is liable if someone was to get hurt in Phase II.
- Abutting Industrial property

Adam Lee of 46 Garden Circle asked for clarification of where the additional development would go. Mike Gotto pointed to the map where land is being set aside for possible future Condominium development.

A motion was made by Dan Philbrick and seconded by Evan Cyr to close the Public Input part of the hearing. After a vote of 6-0-0, the motion carried.

(01:12:38 on DVD)

Mr. Gotto responded to resident's concerns with the following statements:

- They have set up an Association which will have the same insurance as the existing Association to maintain the open space in case someone gets hurt.
- A building committee that Mr. Dean is a member of will ensure that houses that are being built will be consistent with surrounding buildings. They are looking at the \$250,000 to \$350,000 market range.
- Speed bump/ramp is nothing the developer has control of as it is a City street.
- There is existing open space with tree growth and another dividing line of wooded wetland to separate the 1st & 2nd Phased areas.

Mr. Gotto further explained the applicant's intentions. A long discussion ensued between the Board members and applicants.

(01:28:05 on DVD)

Elaine Wickman stated she was in favor of the 15 lot subdivision and the rezoning of the 2 additional lots but was not in favor of the 15 ft setback change due to the safety issues. Chairperson Bellefleur asked if that was her motion and Ms. Wickman said yes.

A motion was made by Elaine Wickman for the approval of a Subdivision consisting of 15 single family building lots without a setback approval change. The approval also includes the rezoning of the triangular shaped area of lots 8 & 9 from Industrial to Suburban Residential.

A discussion ensued amongst Board members regarding the 15 ft setback request and who should be pursuing the Zoning change.

Ms. Wickman amended her motion to state the Planning Board would be initiating the zone change for the triangular shaped area of lots 8 & 9 from Industrial to Suburban Residential.

Dan Philbrick mentioned the condition regarding no development activity would be allowed until a bonding inspection fee had been determined by the Department of Engineering and Ms. Wickman accepted that statement into her motion.

The motion was seconded by Samuel Scogin. After a vote of 6-0-0, the motion carried.

After a brief recess, Chairperson Bellefleur brought the Planning Board meeting back to order.

Mike Gotto, of Stoneybrook Consultants, Inc., an agent for Phillip H. Morgan, is seeking approval for a Special Exception and Site Plan Review of a 9,600 sf storage building located at 845 Washington Street (PID # 180-008) pursuant to Section 60-499 General Business,

(b.) Special Exception, (17.) New Buildings over 5,000 sf, Section 60-1336 Special Exception, Conditions for Approval, and Section 60-1277 Site Plan Review Objectives of the Auburn Code of Ordinance.

(01:35:00 on DVD)

Douglas went over the staff report and presented slides via PowerPoint.

Open Public Input

A motion was made by Dan Philbrick and seconded by Samuel Scogin to close the Public Input part of the hearing. After a vote of 6-0-0, the motion carried.

A motion was made by Evan Cyr and seconded by Dan Philbrick to approve the Special Exception and Site Plan Review of a 9,600 sf storage building located at 845 Washington Street (PID # 180-008) pursuant to Section 60-499 General Business, (b.) Special Exception, (17.) New Buildings over 5,000 sf, Section 60-1336 Special Exception, Conditions for Approval, and Section 60-1277 Site Plan Review Objectives of the Auburn Code of Ordinance with the condition that no development activity shall be allowed until a bonding inspection fee has been determined by the Department of Engineering. After a vote of 6-0-0, the motion carried.

Mike Gotto, of Stoneybrook Consultants, Inc., an agent for Evergreen Subaru has submitted a rezoning petition from Suburban Residential to General Business for properties located at 16 Malibu Drive, 32 Malibu Drive, 40 Malibu Drive and 40 Niskayuna Street pursuant Article XVII- Amendments, Division 2- Amendment to the Zoning Map of the Auburn Code of Ordinance.

Douglas went over the staff report and presented slides via PowerPoint.

Mike Gotto of Stoneybrook, Consultants, Inc & Doug Weisz of Evergreen Subaru explained the proposal and presented their own slides via PowerPoint.

(02:00:45 on DVD)

Open Public Input

A motion was made by Evan Cyr and seconded by Dan Philbrick to close the Public Input part of the hearing. After a vote of 6-0-0, the motion carried.

A motion was made by Dan Philbrick and seconded by Evan Cyr to forward a favorable recommendation to the City Council the rezoning of properties located at 16 Malibu Drive, 32 Malibu Drive, 40 Malibu Drive and 40 Niskayuna Street from Suburban Residential to General Business pursuant to Article XVII- Amendments, Division 2- Amendment to the Zoning Map of the Auburn Code of Ordinance with the following 2 Findings: 1) The properties proposed for rezoning meet the definition of Business Expansion Transition District. 2) The properties proposed for rezoning are in agreement with the 2010 Comprehensive Plan's Future Land Use Plan.

After a vote of 6-0-0, the motion carried.

MISCELLANEOUS:

Douglas mentioned the following updates:

- Regarding Adaptive Re-Use –The ordinance has been sent to the City Attorney for Legal Review and preliminary feedback suggests we will have to continue working on it with the high likelihood it will come back to the Planning Board for some modifications.
- Staff will be making amendments to the State’s Shoreland Zoning requirement.
- 3 Items on the agenda for the August 9th meeting; 204 Minot Av, Krispie Kreme, and 62 Spring String

(02:07:00 on DVD)

ADJOURNMENT

A motion was made by Evan Cyr and seconded by Samuel Scogin to adjourn. After a vote of 6-0-0, the motion carried.



AMENDED PLANNING BOARD STAFF REPORT

To: Auburn Planning Board

From: Douglas M. Greene; AICP, RLA
City Planner

Re: Zoning Map Amendment Request for Pownal Road Area

Date: September 13, 2016

I. **AMENDED STAFF REPORT-** At their August 9th meeting, the Planning Board deliberated a Council initiated zoning map amendment for properties located in the southern end of Auburn along Pownal Road from Agricultural-Resource Protection to Low Density Rural Residential Development. The properties proposed for rezoning at the meeting were; a portion of 1807 Pownal Road, a portion of 1850 Pownal Road, a portion of PID # 021-012 Pownal Road, 1890 Pownal Road, 1863 Pownal Road and a portion of PID # 021-012-001

After lengthy public input and Planning Board discussion, the item was tabled to the September 13th meeting. The Board asked the staff to provide the following additional information at the September 13 meeting.

1. A revised Zoning Map Amendment that would only re-zone the southwest side of Pownal Road from Agricultural Resource Protection to Low Density Country Residential for to an 1.35 acre portion of 1807 Pownal Road (J. F. Murphy Homes Property) and approximate 8.89 acre property at 1863 Pownal Road.
2. A copy of a proposed Declaration of Covenant and Restrictions for 1863 Pownal Road that would permanently restrict that property to one existing dwelling unit.
3. Provide additional information regarding the timeline of events for 1863 Pownal Road.
4. Information pertaining to a “no-decision” option presented at the 8/9 meeting.

These items are attached with this revised and amended Staff Report. In addition, the City Council held a workshop on this item on August 22nd.

- II. **DEPARTMENT REVIEW- NO NEW COMMENTS** since the August 9th meeting.
- a. Police- No concerns.

- b. Auburn Water and Sewer- This rural area is served by private well and septic systems.
- c. Fire Department- Would like to see the home at 1863 become occupied, repairs made and brought up to code. The house currently has no heat and the Fire Department is concerned about the home being protected during the upcoming winter.
- d. Engineering- No concerns.
- e. Public Services- No concerns.
- f. Economic and Community Development (ECD)- The Planning Office has attempted numerous ways to resolve the illegal lot situation at 1863 Pownal Road to no avail. The Staff will consider this limited zone change as a way of correcting undersized lot and to bring the property back into productive use.

III. PLANNING BOARD ACTION-

1. At the September 13th meeting, the Planning Board is being asked to bring this item back on the table for further discussion.
2. The Planning Board is being asked to consider a new scenario # 5, which includes 2 properties located in the southern end of Auburn along Pownal Road to be rezoned from Agricultural-Resource Protection to Low Density Rural Residential Development.

At the August 9th meeting, the Planning Board also considered language from the 2010 Comprehensive Plan (pages 70-71) regarding criteria that need to be present to approve an extension of a rural residential strip.

Rural Residential Road Strips

The City has historically zoned narrow strips of land along some rural roads for low density residential development. These strips represent a compromise between the City's goal of limiting residential development in rural areas, and existing conditions along these rural roads. As part of the development of the Future Land Use Plan (see Chapter 2), the City conducted a comprehensive review of where residential strips should and should not be created based upon the following set of criteria. The considerations outlined below apply sequentially – first to identify where strips are appropriate based on current land use patterns, and then to work through where residential strips are inappropriate based on a variety of considerations.

Consideration #1 – Established Residential Pattern

A residential strip may be provided along a rural road where there is an established pattern of residential uses along the road. An established residential pattern means at least 6-8 homes per half mile counting both sides of the road. In general, both sides of a road should have a residential strip unless there is a significant reason not to allow residential development based on the following considerations.

Staff Comment- The existing half mile of Rural Residential zoned land along Pownal Road before the proposed zone change area has 10 homes, which meets criteria #1.

Consideration #2 – Reserve Area Adjacency

A residential strip should not be provided along a rural road if the area adjacent to the road is a “reserve area” where the objective is to maintain the land as undeveloped to allow for its conversion to a different use in the foreseeable future. There should be some realistic expectation that something will occur that will change the desired land use for the area in the future.

Staff Comment- The area adjacent to the proposed zone change is not designated as a “reserve area”.

Consideration #3 – Natural Resource Adjacency

A residential strip should not be provided along a rural road if the area adjacent to the road has significant natural resource value. Areas with significant natural value include areas that are zoned Resource Protection or are high value wetlands, 100 Year floodplains, significant wildlife habitats, and areas with steep slopes (>25%).

Staff Comment- The area adjacent to the proposed zone change is not considered a significant natural resource area.

Consideration #4 – Conservation/Open Space Adjacency

A residential strip should not be provided along a rural road where the adjacent land is protected open space, or where there is a reasonable expectation that the land will be preserved as open space in the foreseeable future, and residential development is inconsistent with that open space use.

Staff Comment- The land adjacent to the proposed zone change is not protected open space nor is there a reasonable expectation to preserve open space in the foreseeable future.

Consideration #5 -- Ability to Provide Public Services

A residential strip should not be provided along a rural road if residential development will tax the City’s ability to provide municipal services as indicated by the following:

- *The road is a gravel or dirt road*
- *The road is a poorly maintained paved road that will need to be improved to support residential development along it*

Staff Comment- The proposed zone change will not tax the City’s ability to provide municipal services. Given the nearby area already zoned Rural Residential has 10 homes in a half mile, police and fire already must serve the area. All water and sewerage are provided by private wells and septic systems.

Consideration #6 – Water Quality Protection

A residential strip should not be provided along rural roads with undeveloped frontage that are located in the watershed of Lake Auburn, unless such development will not have an adverse impact on the lake's water quality.

Staff Comment- The proposed zone change is not located in the watershed of Lake Auburn.

The Future Land Use Plan (see Chapter 2) shows the areas where low density residential development is proposed to be allowed along rural roads based on these criteria. These criteria should be used in the future to review the areas designated as residential strips as conditions change, or to review property owner-initiated requests for rezoning.

IV. STAFF RECOMMENDATION-

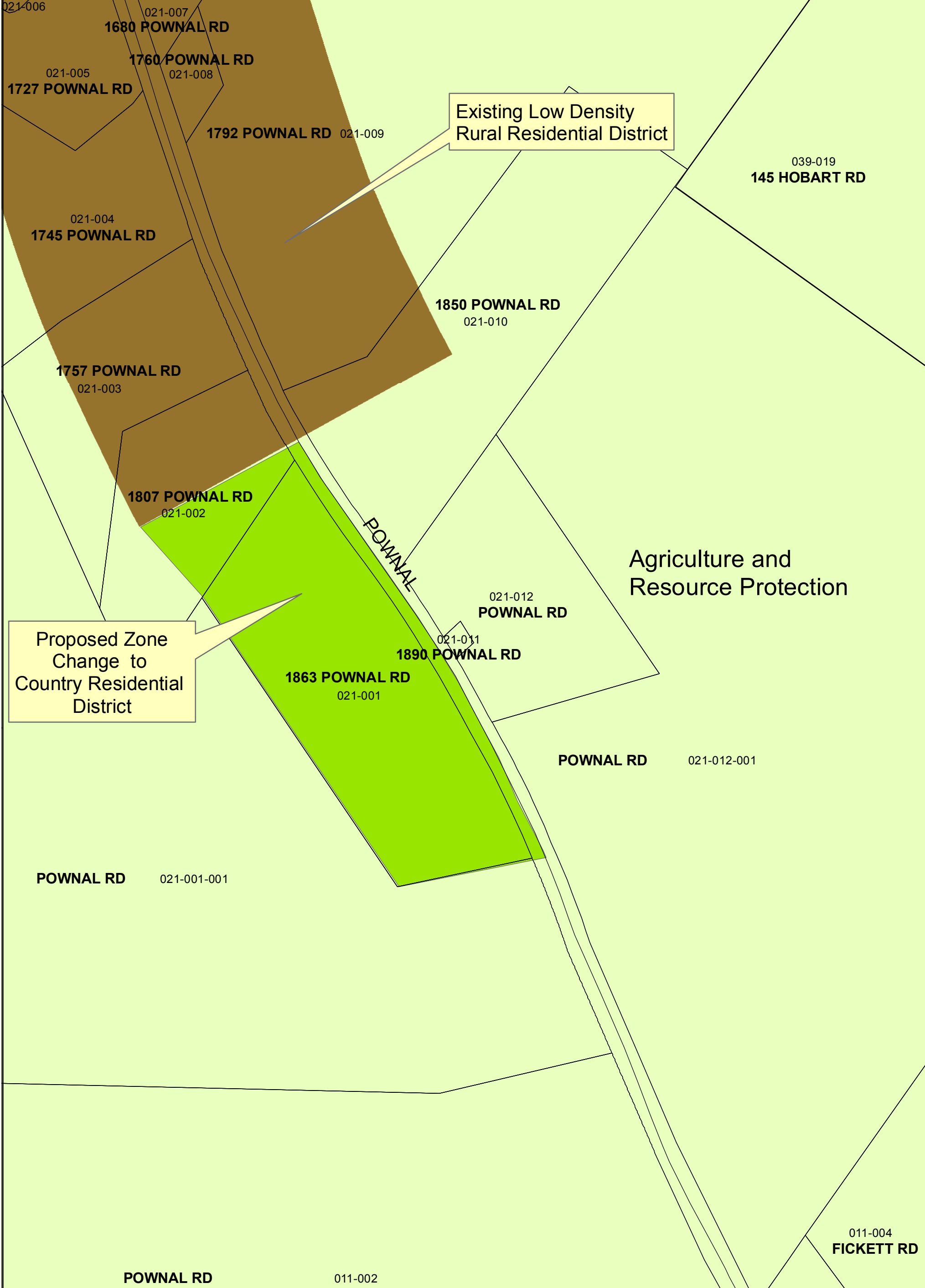
STAFF COMMENTS- The Staff is still concerned that correcting non-conformities through a zone change is not a normal justification for rezoning a property. The Staff is also concerned that approving this Zoning Map Amendment could be considered a precedent for rezoning other areas in Auburn's Agricultural Zone.

STAFF RECOMMENDATION- Last month, the Staff produced 4 possible scenarios for a possible zone change, based on a Zone Change initiated by the City Council. At the end of this item's discussion at the August 9th meeting, the Planning Board asked the Staff to produce a 5th scenario that only proposed Low Density Country Residential for a 1.35 acre portion of 1807 Pownal Road and all of 1863 Pownal Road, which is approximate 8.87 acres. The applicant has produced a Declaration of Covenant and Restrictions, which would permanently restrict 1863 Pownal Road to only one existing home on the 8.9 acres. While this offers protection from future subdivisions, it cannot be used as a condition of the zone change.

PLANNING BOARD ACTION- Should the Planning Board consider Scenario # 5 as the preferred option for "fixing" the illegal lot status of 1863 Pownal Road, they should forward a recommendation of approval to the City Council for the Zoning Map Amendment based on Scenario # 5 with the following findings:

1. Scenario # 5, as presented by staff at the September 13 meeting, meets the six considerations of the Rural Residential Strips in the 2010 Comprehensive Plan. Criteria 6 will not apply.
2. Scenario # 5 minimizes the number of new lots that could be created.
3. The rezoning will allow the property at 1863 Pownal Road to be purchased, repaired, maintained and put on the tax rolls.


Douglas M. Greene, A.I.C.P., R.L.A.
City Planner



Scenario 5

Low Density Country Residential

**DECLARATION OF COVENANT AND RESTRICTION
FOR AGHRA CAPALL LLC**

THIS Declaration of Covenant and Restriction is made effective this day of _____, 2016, by **Aghra Capall LLC**, a limited liability company duly organized and existing under the laws of the State of Maine, with a place of business at 195 Center Street in Auburn, Androscoggin County, Maine, hereinafter referred to as the "LLC", which expression shall include its successors and assigns.

WHEREAS

The LLC owns a certain parcel of improved real property (hereafter the "Real Estate") located at 1863 Pownal Road in Auburn, Androscoggin County, Maine, and being the same premises conveyed to the LLC by deed of Heaven Lee Love and Ralph Searles, Jr. dated July 26, 2016 and recorded in the Androscoggin County Registry of Deeds in Book 9422, Page 216; and

WHEREAS,

The LLC has elected to place, without any requirement imposed upon the LLC and without any coercion on the part of any person or entity, a perpetual restriction, running with the land, upon the Real Estate in order to prevent further division of the Real Estate into multiple lots and to restrict development on the Real Estate, which is the purpose of this document to recite (this document hereafter referred to as the "Declaration").

NOW, THEREFORE,

The LLC, for itself and its successors and assigns, declares the Real Estate, as described in the aforementioned deed recorded in said Registry in Book 9422, Page 216, to be subject to the following covenant and restriction:

ARTICLE 1. Restriction. The LLC hereby states and declares that the Real Estate, from the effective date of this instrument set forth above, is and shall be subject to a perpetual restriction,

running with the land, that the Real Estate shall not be divided into multiple lots, without regard to any municipal zoning provisions applicable to the Real Estate, whether hereby existing or hereafter arising. This restriction shall not prevent the LLC from accepting delivery of any subsequent deed which would add additional real property to the Real Estate, but the acceptance of any such deed shall not in any manner affect the nature or scope of the restriction established hereby or any other aspect of this Declaration. Any such additional real property once acquired by the LLC shall be included under the definition of “Real Estate” hereunder, and shall be subject to all terms and conditions set forth herein.

ARTICLE 2. Triggering Events. This restriction shall only take effect upon the following triggering events occurring; (a) the City of Auburn confirming to the LLC in writing that the City will allow permits to be issued to the LLC in order to make repairs and perform maintenance on the residential structure currently located on the Real Estate and to allow accessory structures to the currently existing residential structure to be located on the Real Estate, and (b) the recording of this Declaration in the Androscoggin County Registry of Deeds. In the event subpart (a) of this Article 2 occurs, the LLC shall be legally obligated to promptly accomplish subpart (b) of this Article 2. The cost of recording this Declaration shall be borne by the LLC.

ARTICLE 3. Enforcement. The authority for enforcement of any violation of the restriction imposed upon the Real Estate by this Declaration is hereby granted to the City of Auburn and any real estate property owner whose property abuts the Real Estate. This enforcement authority may be exercised by any of the parties set forth in this Article 2, and shall not require all of said parties to engage in any applicable enforcement action.

IN WITNESS WHEREOF, Gary McFarland, duly authorized Member of Aghra Capall LLC, has caused this instrument to be executed on the day and date first above written.

AGHRA CAPALL LLC

By: Gary McFarland
Its: Member, Duly Authorized

**STATE OF MAINE
ANDROSCOGGIN, SS.**

_____, 2016

Then personally appeared the above-named **Gary McFarland**, duly authorized Member of **AGHRA CAPALL LLC** and acknowledged the foregoing instrument to be his free act and deed in said capacity and the free act and deed of **AGHRA CAPALL LLC**.

Notary Public/Attorney At Law
Print Name: _____
Commission Expires: _____

1863 Pownal Road Timeline and questions raised by the Council at the Workshop on 8/22/16

Parcel References: Parcel 021-001 is the entire parcel in question totaling nearly 80 acres before the illegal split and after the split, Parcel 021-001 is the home and 8-9 acres with the house and barn. Parcel 021-001-001 is the vacant land parcel estimated at 56.4 Acres based on information submitted as part of the shooting range application. Below are the transfers and timelines that were available in the assessors record and the Registry of Deeds and other timeline information discussed at the meeting.

7/15/2005 – Deed from Richard and Raylene McCubrey to Carol and Jonathan Flink – Book 6409 Page 245 – Parcel 021-001 – 1863 Pownal Road before illegal lot split - Estimated at 80 Acres in Deed – Sale Price \$648,500

5/13/2008 – Deed of Foreclosure on Flinks By Sun Trust Mortgage - \$0 – Parcel estimated at 8-9 Acres - Staffs opinion is that this foreclosure caused the split of the parcel - Parcel 021-001

11/7/2008 - Deed from Sun Trust Mortgage Inc to Sun Trust Mortgage Inc – Book 7940 Page 284 – Sale Price \$525,000 - Parcel 021-001

5/13/2011 – Deed from Sun Trust Mortgage to US Bank National Association – Book 8159 Page 209 – Sale Price \$234,900 - Parcel 021-001

11/23/2010 – Bankruptcy Sale of Estate of Jonathan and Carol Flink to Jenis Holdings – Book 8061 Page 172 – Parcel 021-001-001 – Estimated at 56.4 Acres – Sale Price 37,500.

5/19/2011 – Wachovia Bank to Heaven Lee Love and Ralph Searles – Book 8159 Page 214 – Parcel 021-001 – Estimated at 8-9 Acres – Sale Price \$140,000

5/13/2013 – Application for Planning Board approval of a Firearms Training Facility – Parcel 021-001-001
Legal notice of Planning Board project sent June 25, 2013 for July 9, 2013 meeting. Substantial public input and concerns raised by neighbors and the application was withdrawn prior to the meeting after notifying staff that they had been unable to correct the lot size violation.

6/2/2016 – As was raised at the Council meeting, it appears based on a file name in the footer of the Councilor request that someone worked on drafting the request on this day.

6/10/2016 – Economic and Community Development Staff receives Councilor Request from City Manager's Office after Agenda Setting Meeting.

6/13/2016 – Staff adds the request to Council Economic and Community Development Committee Agenda for direction.

6/16/2016 - Council Economic and Community Development Committee Considers Councilor Request and recommends that staff follow the ordinance prescribed process and bring the request to the Planning Board for a recommendation to the Council.

7/26/2016 – Deed from Heaven Lee Love and Ralph Searles Jr. to Aghra Capall LLC Recorded at the Registry on 8/3/2016. The City has not yet received a copy of this deed from the registry as of 8/22/2016.

1863 Pownal Road Timeline and questions raised by the Council at the Workshop on 8/22/16

7/27/2016 – Planning Board Notice of public hearing mailed to owners and abutters based on required schedule for 8/9/2016 Board Meeting.

7/28/2016 and 8/2/2016 – Planning Board Notice Appears in Sun Journal based on required schedule for 8/9/2016 Board Meeting.

8/9/16- Planning Board Considers proposal and requests additional information. Board tables item to September 13 meeting.

8/22/2016 – Council agenda includes update and discussion on the proposed zoning change.

Other questions raised at the meeting on 8/22/2016:

1. When did we change the zoning at the intersections of Rt 136 and Jordan School Road and Pownal and Jordan School Roads? Both ends of Jordan School Road (Rt 136 and Pownal) appear to be zoned as they are today on the 2002 zoning map on file in the Economic and Community Development Office. We did not research beyond 2002.
2. When did the South Witham Road zoning change near the Alpaca Farm and how far did the change extend? Ordinance 06-09172012 approved the second and final reading on a zoning change on South Witham Road. Second and final reading vote for passage was 4-3 (Councilors Crowley, Walker, and Gerry). The change did not impact the AG zone but did change an area from Low Density Country Residential (LDCR) to Rural Residence (RR) which went from a lot size requirement of 3 acres with 325 feet of street frontage to a 1 acre minimum with 250' frontage requirement. Both ends of the road were already RR with a section of LDCR in between. The Change replaced about 4,000 feet of LDCR frontage with RR Frontage.

BRANN & ISAACSON
ATTORNEYS AND COUNSELORS AT LAW

DANIEL C. STOCKFORD | Partner
dstockford@brannlaw.com

MEMORANDUM

To: Howard Kroll, City Administrator;
Eric Cousens, Deputy Director of Planning & Development
From: Daniel Stockford, Esq.; Anne Torregrossa, Esq.
Date: May 2, 2016
Re: Request for No-Action Letter

This memorandum is in response to your inquiry regarding the possibility of issuing a “no-action letter” regarding 1863 Pownal Road, which is a nonconforming lot due to its failure to meet minimum lot size requirements.¹ We understand that a representative for a potential purchaser of the property has requested that the City issue a no-action letter, essentially agreeing not to take enforcement action on the basis of the nonconformity. Because no-action letters are not enforceable, and because a no-action letter would likely not accomplish the purchaser’s goals anyway, we do not recommend that the City issue a no-action letter in this case.

A no-action letter is generally a letter by municipal officers or a municipal official agreeing not to prosecute a landowner on the basis of a land use or zoning violation. The authority for issuing a no-action letter is the City’s inherent prosecutorial discretion on when, and how, to enforce its own ordinances. Both Maine Municipal Association and the State Planning Office recognize no-action letters as a tool for code enforcement officers, but they also recognize that such letters are not binding on future administrations. This is exactly what limits their effectiveness, because a future City Council could decide to pursue enforcement action despite any previously issued letter.

A case decided by the Law Court last year highlights the limitations of a no-action letter. The Phippsburg Board of Selectmen issued a property owner a no-action letter that the Town would not enforce its ordinance against two nonconforming lots and would “consider both lots to be lawful nonconforming lots.” On the basis of this letter, the property owner applied for, and received a permit to develop one of the lots. An abutter sued the owner, requesting a declaratory judgment that the lot was not lawfully nonconforming. After a year and a half of litigation, the Law Court agreed with the abutter, and the no-action letter did nothing to protect the owner’s development rights. *Day v. Town of Phippsburg*, 2015 ME 13, 110 A.3d 645.

¹ Whether this lot is lawfully nonconforming is a question that we are currently researching and will separately address.

May 2, 2016
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Additionally, it is likely that a no-action letter would not give the City the authority to grant building and other permits that it could not otherwise grant under its ordinances. The no-action letter is simply a statement agreeing not to prosecute. It is not an agreement to violate the City's own permitting ordinances. Even if the City granted a building or other permit, an abutter or other interested party could challenge that decision, just as the abutter did in the *Phippsburg* case. Any such challenge likely would be successful.

DCS/lh

PLANNING BOARD STAFF REPORT

To: Auburn Planning Board

From: Douglas M. Greene; AICP, RLA
City Planner

Re: Text Amendment to State Stormwater Standards as Referenced in the
Auburn Zoning Ordinance.

Date: September 13, 2016

I. **THE PROPOSAL-** The Maine Department of Environmental Protection (DEP) has asked the City of Auburn to amend references to State Stormwater Standards as found in Article XVI- Administration and Enforcement- Division 2- Site Plan Law, to allow the City to maintain Delegated Review Authority.

II. **DEPARTMENT REVIEW-** This proposed text amendment did not require review by the Plan Review Committee.

- a. Police- No comments.
- b. Auburn Water and Sewer- No comments.
- c. Fire Department- No comments.
- d. Engineering- No comments.
- e. Public Services- No comments.
- f. Economic and Community Development (ECD)- No comments.

III. **PLANNING BOARD ACTION-** The Planning Board is being asked to hold a public hearing and consider making a recommendation to the City Council on this text amendment.

IV. **STAFF RECOMMENDATION-** Staff asks the Planning Board to send the City Council a recommendation of APPROVAL of this text amendment with the following findings:

1. Updating the Site Plan Law to reflect the newer State regulations will allow the city to maintain its Delegated Review Authority.


Douglas M. Greene, A.I.C.P., R.L.A.
City Planner

ARTICLE XVI. - ADMINISTRATION AND ENFORCEMENT

DIVISION 2. - SITE PLAN REVIEW

Subdivision I. - In General

Sec. 60-1276. - Purpose.

The purpose of site plan review is to ensure that the design and layout of certain developments permitted by special exceptions, or other developments noted herein, will constitute suitable development and will not result in a detriment to city, neighborhood or the environment.

(Ord. of 9-21-2009, § 7.1A)

Sec. 60-1277. - Objective.

In considering a site plan, the planning board shall make findings that the development has made provisions for:

- (1) Protection of adjacent areas against detrimental or offensive uses on the site by provision of adequate surface water drainage, buffers against artificial and reflected light, sight, sound, dust and vibration; and preservation of light and air;
- (2) Convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent areas;
- (3) Adequacy of the methods of disposal for wastes; and
- (4) Protection of environment features on the site and in adjacent areas.

(Ord. of 9-21-2009, § 7.1B)

Sec. 60-1278. - Applicability.

A site plan review shall be required for the following projects:

- (1) All uses permitted by special exception.
- (2) Any other uses for which site plan review is required by any other provision contained in this or other ordinances.

(Ord. of 9-21-2009, § 7.1C)

Secs. 60-1279—60-1299. - Reserved.

Subdivision II. - Procedure

Sec. 60-1300. - File for site plan review.

An applicant for site plan review shall file with the department of community development and planning a completed site plan application along with an original and 20 copies of the site plan and the required processing fee. Such plans shall be filed not less than 30 days prior to a regularly scheduled meeting. Plans shall be folded at a size not to exceed 8½ inches by 11 inches.

(Ord. of 9-21-2009, § 7.1D(1))

Sec. 60-1301. - Scale; required information.

The original plan shall be drawn on reproducible Mylar at a scale of no more than 100 feet to the inch. Each site plan shall contain the following information:

- (1) Name and address of owner and developer and interest of the applicant if other than the owner or developer.
- (2) Name of development, scale and meridian arrow, with specific definition of representation, date of plan and legend.
- (3) Names and addresses of all owners of record of all adjacent property as appear on assessor's records.
- (4) Current zoning boundaries and 100-year floodplain boundaries including surrounding areas to a distance of 300 feet from the perimeter of the site.
- (5) Easements; rights-of-way, existing, planned or proposed; or other reservations adjacent to or intersecting the property.
- (6) Topographic map of the site, containing the following:
 - a. Existing contours, where the slope of existing ground surface is generally two percent or more, the topographic map shall show contours at intervals of five feet of elevation (or lesser intervals as the planning board or engineering department may prescribe). Where the slope of the existing ground surface is generally less than two percent, contour intervals of one foot shall be shown. These contours shall not be copied from the city topographic maps and shall be determined from an on-site survey certified by a registered land surveyor.
 - b. Proposed contours shall be shown at intervals to be determined by the city engineer.
- (7) Location of watercourses, wetlands, marshes, surface water, rock outcroppings, wooded areas, single trees with a diameter of ten inches measured three feet from the base of the trunk.
- (8) Location of buildings existing on the tract to be developed and on adjacent tracts within a distance of 100 feet from the property line, indicating whether existing buildings on the tract are to be retained, modified or removed.
- (9) Locations of water mains, sewer mains, wells, fire hydrants, culverts, drains, pipe sizes, grades and direction of flow, existing within 200 feet of the subject property.
- (10) Existing soil conditions and soil suitability test results.
- (11) Locations of proposed buildings and uses thereof.
- (12) Proposed traffic circulation system including streets, parking lots, driveways and other access and egress facilities, curblines, sidewalk lines and existing streets, including the projected traffic flow patterns into and upon the site for both vehicles and pedestrians and an estimate of the projected number of motor vehicle trips to and from the site for an average day and for peak hours.
- (13) Location of existing and proposed public utility lines, indicating whether proposed lines will be placed underground.

- (14) Site developments requiring stormwater permits pursuant to 38 M.R.S.A. § 420-D shall include the required plan and to the extent permitted under 38 M.R.S.A. § 489-A, be reviewed under the procedures of article XVI of this chapter; and they shall meet and comply with 38 M.R.S.A. § 484(4-A) and those Rules promulgated by the Maine Department of Environmental Protection pursuant to the Site Law and section 420-D, specifically Rules 500, 501 and 502, as last amended ~~December 21, 2006~~ August 12, 2015. ~~Adopted September 22, 2005, said Rules taking effect November 16, 2005, as enacted by Legislative Resolve, chapter 87, Public Laws of 2005 (LD 625/HP 458), amended March 20, 2006.~~ If a project proposes infiltration and the standards in Rule 500, appendix D are not met, then a waste discharge license may be required from the Maine Department of Environmental Protection. An infiltration system serving a development regulated under the Site Location of Development Act may be required to meet standards in addition to those in appendix D.
- (15) Location and design of proposed off-street parking and loading areas indicating number and size of stalls.
- (16) Proposed location and direction of and time of use of outdoor lighting.
- (17) Existing and proposed planting, fences and walls, including all landscaping and screening and indicating existing trees to be retained and areas to be left undisturbed, including design features intended to integrate the proposed new development into the existing landscape to enhance aesthetic assets and to screen objectionable features from neighbors.
- (18) Location, size, design and manner of illumination of signs.
- (19) Disposal of sewage, trash, solid waste, oil waste, hazardous waste or radioactive waste showing disposal facilities, receptacles or areas.
- (20) Perimeter boundaries of the site giving complete descriptive lot data by bearings, distances and radii of curves including the name and seal of the registered land surveyor who prepared the plan.
- (21) Description and plan of capacity and location of means of sewage disposal together with approval of sewer district engineer or evidence of soil suitability for such disposal (test pit locations shall be shown on the plans) similarly approved by the city engineer department.
- (22) A statement of the amount of area of land involved in the site, the percentage of the site proposed to be covered by buildings, the total number of dwelling units proposed per acre, the area proposed to be devoted to open space, the area proposed to be paved for parking, driveways, loading space and sidewalks, the total number of parking spaces required by the zoning chapter for the uses proposed, the number of employees expected per shift and the total floor area of proposed commercial or industrial uses.
- (23) Description and plan of a phase development concept detailing the areas and sequence of phasing.
- (24) A statement by the developer assuring that he has the financial capabilities to fully carry out the project and to comply with the conditions imposed by the planning board.

(Ord. of 9-21-2009, § 7.1D(2))

Sec. 60-1302. - Exemption for information.

Upon request, the planning board, or the planning director, acting for the board, may waive the necessity of providing any of the foregoing planning information which is not relevant to the proposed development.

(Ord. of 9-21-2009, § 7.1D(3))

Sec. 60-1303. - Approval—Time line for review.

The planning director shall, within five days of receipt, transmit copies of the application and site plan to the department that in his view requires such information. The agencies receiving these copies shall have up to 15 days to make recommendations to the planning board.

(Ord. of 9-21-2009, § 7.1D(4))

Sec. 60-1304. - Same—Public hearing; findings.

The planning board shall, within 30 days of receipt of a completed application, hold a public hearing. Notice of a hearing shall be given in the manner provided for in division 3 of article XVII of this chapter. The planning board will take final action on the site plan within 60 days of receiving a completed application, or within such other time limit as may be mutually agreed to. Such final action shall consist of either:

- (1) A finding and determination that the proposed project will constitute a suitable development and will not result in a detriment to the neighborhood or the environment; or
- (2) A written denial of the application stating the reasons for such denial, upon a finding that:
 - a. The provisions for vehicular loading, unloading and parking and for vehicular and pedestrian circulation on the site and onto adjacent public streets will create hazards to safety.
 - b. The bulk, location or operation of proposed buildings and structures will be detrimental to and adversely affect the use and values of existing development in the neighborhood or the health or safety of persons residing or working therein.
 - c. The provisions for on-site landscaping are inadequate to screen neighboring properties from unsightly features of the development.
 - d. The site plan does not adequately provide for the soil and drainage problems which the development may give rise to in accordance with section 60-1301(14).
 - e. The provisions for exterior lighting create safety hazards for motorists traveling on adjacent streets, or are inadequate for the safety or occupants or users of the site, or will create a nuisance affecting adjacent properties.
 - f. The proposed development will unduly burden off-site sewer drainage or water systems.
 - g. The proposed development will create a fire hazard by failing to provide adequate access to the site, or to buildings on the site, for emergency vehicles.
 - h. The proposed development violates provisions of the zoning regulations applicable to the site or other applicable laws, regulations or ordinances.
 - i. The proposed development will unduly impact the ability to provide municipal services.

(Ord. of 9-21-2009, § 7.1D(5))

Sec. 60-1305. - Same—Subject to conditions, modification, restrictions, etc.

Approval may be made subject to conditions, modifications and restrictions as the planning board may deem necessary; and any construction, reconstruction, alteration or addition shall be carried on only in conformity to such conditions, modifications or restrictions and in conformity with the application and site plan.

(Ord. of 9-21-2009, § 7.1D(6))

Sec. 60-1306. - Signed copies.

If no action is taken within 60 days after submittal of a completed application, the site plan shall be deemed to have been approved. An original of the approved plan signed by the planning board and one signed copy shall be delivered to the applicant, the assessor's department, the engineering department and to the building inspector on which basis building permits may be issued when all other required plans have been approved.

(Ord. of 9-21-2009, § 7.1D(7))

Sec. 60-1307. - Findings in writing.

The findings of the planning board shall be in writing with a copy being forwarded to the applicant. The planning board's written report shall also include a statement as to how any deficiencies in the site plan might be resolved and what conditions, modifications and restrictions are to be complied with in executing the plan.

(Ord. of 9-21-2009, § 7.1D(8))

Sec. 60-1308. - Expiration of approval.

Approval of a site plan shall expire one year after the date of approval unless all building permits have been obtained to begin construction in accordance with the approved site plan. If a development is contested with litigation, the approval period of this section shall not commence until a final court judgment is issued or until the litigation has been dismissed with prejudice. This provision shall apply retroactively to all projects approved after January 1, 2007. Any site plan that contains a phase concept approved by the planning board shall not be required to obtain all building permits within the time sequence established for completion of each phase. No building permits or other permits shall be issued until all improvements are substantially completed for the preceding phase. A single one-year extension may be given upon a showing of good cause in writing by the applicant to the planning board not less than 30 days before the expiration of approval of his existing plan. The planning board shall approve or disapprove the requested extension at its next regular meeting.

(Ord. of 9-21-2009, § 7.1D(9); Ord. No. 02-04012013, att. D, 4-16-2013)

Sec. 60-1309. - No building permitted without approval.

No permit shall be issued for the construction of any building in an area included in the site plan or in any development for which a site plan is required until such site plan has been approved by the planning board and unless the construction plans and specifications presented to the building inspector with the application for the permit are consistent with the approved site plan.

(Ord. of 9-21-2009, § 7.1D(10))

Sec. 60-1310. - Certificate of occupancy.

No certificate of occupancy shall be issued with respect to any building until all construction called for by the site plan is completed, except by special permission of the planning board granted upon a showing

of special circumstances warranted the issuance of the certificate and that the remaining construction will be completed within a reasonable time.

(Ord. of 9-21-2009, § 7.1D(11))

Sec. 60-1311. - Deposit of surety.

The planning board may require the applicant with the submission of the site plan to tender a certified check payable to the city and issued by a surety company or secured by deposits issued by institutions authorized to issue the same by the laws of the state or the United States or irrevocable letters of credit issued by said banking institutions in an amount of money determined by the city planner, with the advice of the various city departments and agencies concerned, to be sufficient to ensure compliance with the approved site plan.

(Ord. of 9-21-2009, § 7.1D(12))

Sec. 60-1312. - Review of planning board needed for variance.

For those developments subject to site plan review (division 2 of article XVI of this chapter) the relaxation of the dimensional requirements of any use district shall be reviewed by the planning board. The modifications of the dimensional requirements shall be allowed as the planning board may deem necessary to carry out the objectives and intent of site plan review as specified in division 2 of article XVI of this chapter.

(Ord. of 9-21-2009, § 7.1D(13))

Sec. 60-1313. - Correction of off-site deficiencies.

The planning board shall have the right to require the developer, at his expense, to correct any off-site deficiencies either created or aggravated by the developer's proposed project.

(Ord. of 9-21-2009, § 7.1D)

Secs. 60-1314—60-1334. - Reserved.

DIVISION 6. - ENFORCEMENT

Sec. 60-1401. - Permit required.

No building shall be erected, altered or moved in the city without first filing an application in writing with the building inspector. Such permits shall be applied for to the building inspector and he shall not approve an application for a building permit unless the plans for such a building and the intended uses thereof in all respects fulfill the provisions of this chapter and all other applicable city ordinance provisions.

(Ord. of 9-21-2009, § 7.5A)

Sec. 60-1402. - Plan required.

Each application for a permit to build, enlarge, alter or move a building shall be accompanied by a plot plan in duplicate drawn to scale showing and stating the dimensions in feet of the lot on which such building is proposed to be erected, enlarged, altered or moved, also the location and ground coverage dimensions of any building already existing upon such lot, and the location thereon and ground coverage dimensions on such lot of any building or structure proposed to be erected, or moved onto it. Such plot plan shall also show each street, alley or right-of-way on or adjacent to the lot in question. Upon request, the building inspector may waive the necessity of providing any of the foregoing information which is not relevant to the proposed project. One copy of each such application and plot plan shall be kept on file in the office to the building inspector. Submission of a plot plan in connection with permits for agricultural buildings need not be submitted unless deemed necessary by the building inspector.

(Ord. of 9-21-2009, § 7.5B)

Sec. 60-1403. - Enforcement.

- (a) This chapter shall be enforced by the director of land use planning and enforcement and his duly authorized agents.
- (b) The director, building inspector, code enforcement officer or police chief, on their individual initiative, or on the request of any other municipal official or upon any well founded information in writing indicating possible violation of this chapter, shall make or cause to be made an investigation of facts and an inspection of the premises where such violation is said to exist.
- (c) Whenever the municipal official charged with enforcement determines that there are reasonable grounds to believe that there has been a violation of any provisions of this chapter, he shall initiate enforcement proceedings in accordance with the citation system established in article VIII of chapter 2. Alternatively, he may initiate a land use complaint pursuant to state law in which case the penalties there provided shall apply.

(Ord. of 9-21-2009, § 7.5C)

Secs. 60-1404—60-1424. - Reserved.