

City of Keene
New Hampshire

MINOR PROJECT REVIEW COMMITTEE
MEETING MINUTES

Thursday, May 2, 2024

10:00 AM

**Council Chambers,
City Hall**

Members Present:

Med Kopczynski, Vice Chair & City
Manager's Designee
Don Lussier, Public Works Director's
Designee
Mari Brunner, Community Development
Director's Designee
Evan Clements, Zoning Administrator's
Designee
Jason Martin, Acting Fire Chief

Other Staff Present:

Megan Fortson, Planning Technician

1) Call to Order – Roll Call

Vice Chair Kopczynski called the meeting to order at 10:00 AM. Roll call was conducted.

2) Minutes of Previous Meetings – January 4, 2024; February 1, 2024; March 7, 2024; and April 4, 2024

Mr. Clements made a motion to approve the meeting minutes of January 4, 2024. Ms. Brunner seconded the motion, which passed by unanimous vote.

Mr. Clements made a motion to approve the meeting minutes of February 1, 2024. Ms. Brunner seconded the motion, which passed by unanimous vote.

Mr. Clements made a motion to approve the meeting minutes of March 7, 2024 and April 4, 2024. Ms. Brunner seconded the motion, which passed by unanimous vote.

3) Final Vote on Conditional Approvals

Megan Fortson, Planning Technician, stated that there are no final votes on conditional approvals for today.

4) Public Hearing

A) SPR-204, Modification #4 – Site Plan – Bergeron Mechanical Exterior Changes, 216 Marlboro St - Applicant Brickstone Land Use Consultants, on behalf of owner 216 Marlboro St LLC, proposes to make exterior building modifications to the Bergeron Mechanical building at 216 Marlboro St (TMP #589-016-000). The parcel is 0.97 ac and is located in the Neighborhood Business District.

Mr. Kopczynski introduced SPR-204, Modification #4, and asked if staff had recommendations for the completeness of the application.

Ms. Fortson stated that the applicant has requested exemptions from submitting a location map of the proposed improvements, a proposed conditions plan, a grading plan, landscaping plan, lighting plan, drainage report, traffic analysis, soil analysis, historic evaluation, screening analysis, and architectural and visual appearance analysis. She continued that staff determined that the requested exemptions would have no bearing on the merits of the application and recommend that the MPRC accept the application as complete.

Ms. Brunner made a motion to accept the application as complete. Mr. Lussier seconded the motion, which passed by unanimous vote.

Mr. Kopczynski asked to hear from the applicant.

Jim Phippard of Brickstone Land Use Consultants stated that he is here on behalf of 216 Marlboro St., LLC. He continued that this is a repeat application to modify the approved elevations to change the siding and appearance of the building. No other physical changes to the site are proposed. The proposed changes were originally reviewed and conditionally approved in 2022; however, the conditional approval was subsequently rescinded when staff determined the site was out of compliance with the zoning requirements for the Neighborhood Business District. Corrections to the site were made. They removed the non-complying paved area at the rear of the property. The site now conforms to the lot coverage requirements and there is no encroachment of pavement into the wetlands setback. Earlier this year, a boundary line adjustment was approved with a neighboring property, 194 Marlboro St. The rear portion of that property, which is just over 4,000 square feet in size, was added to the parcel at 216 Marlboro St. It now complies with the dimensional requirements and lot coverage requirements.

Mr. Phippard continued that the physical changes to the building involved changing the siding, causing a dramatic change to the building's appearance, which required approval from the Planning Board or the MPRC. 216 Marlboro St. LLC requests that this be reapproved. The work has been completed, so this request is after the fact, but they would like to make it official.

Mr. Clements asked Mr. Phippard about what the status is of the sign permit application for the mechanical units on the roof. Mr. Phippard replied that he does not know; he was not part of that. He continued that he has a copy of the application he thought had been submitted. Mr. Clements

replied that the application's narrative says the signage will conform with the sign regulations, so he was looking for an update.

Mr. Lussier asked the MPRC members if that would be a condition they would want to add to the approval. Ms. Brunner replied that staff has provided a recommended motion that includes a condition related to the sign permit.

Mr. Kopczynski opened the public hearing and asked for comment. Hearing none, he closed the public hearing and asked the MPRC to deliberate.

Ms. Brunner stated that she does not see anything with the application that would not comply with the Planning Board's standards for architectural appearance. She continued that she thinks this application meets all of the standards for visual and architectural appearance, which is the only item the MPRC has to review. She appreciates the applicant addressing all of the Zoning issues, which she knows was a headache. This complies with Zoning. The only remaining issue she sees is the sign permit. She thinks the sign permit application that was submitted expired due to staff not receiving information they were waiting on. That will have to be resubmitted. She thinks the MPRC should include that recommended condition.

Mr. Clements stated that he agrees with Ms. Brunner regarding the visual appearance. He continued that he does not believe it is intense, distracting, or anything of that nature. It meets the Planning Board's regulations.

Mr. Kopczynski asked for a motion.

Ms. Brunner made a motion to approve SPR-204, Modification #4, as shown on the elevations identified as "Existing Elevations, 216 Marlboro St., Keene, NH, 03431, Parcel ID #589-016-000," prepared by Randall Walter on August 8, 2022, with the following conditions precedent prior to final approval and signature of the elevations by the Minor Project Review Committee chair:

- 1) Owner's signature appears on the Site Layout Plan
- 2) Submittal of five (5) paper copies and a digital copy of the final plan set and elevations
- 3) Submittal and approval of a sign permit application to demonstrate that the rooftop condensers are either permitted under the Sign Code or that the units shall be screened in accordance with Section 20.6 of the Land Development Code.

Mr. Lussier seconded the motion, which passed by unanimous vote.

- 5) **Changes to Minor Project Review Committee Application Fee Schedule – The City of Keene Community Development Department proposes to amend sections of Article 25, "Application Procedures" of the Land Development Code and Chapter 100 of Appendix B of the City Code of Ordinances to change the certified mailing requirement to a "Certificate of Mailing."**

Mr. Kopczynski asked staff to speak to this.

Ms. Fortson stated that historically, staff have noticed the proposed changes to fee schedules in a legal notice and then brought it to the board's attention at a meeting for review. She continued that at the next meeting, the board would vote whether to adopt the fee schedule. Staff proposes a slew of changes to fees associated with various boards, including the Zoning Board of Adjustment (ZBA) and Planning Board. The only change applicable to the MPRC is a proposed change to how the City notices abutters. Currently, staff sends certified letters, which cost \$5.04 each. The NH RSA only requires the City to provide verified mailings. The USPS offers a product called a "Certificate of Mailing," which would lower the cost of mailing each abutter letter while still verifying that the Post Office received the letters. The need to physically sign for a letter (certified mail) is a hindrance for some people, and this is not required for letters sent via Certificate of Mailing.

Mr. Kopczynski stated that this will be a change to City Code, so there will ultimately be a discussion that goes before the Finance, Organization, and Personnel Committee and then the City Council. He continued that if the MPRC wants to be on record in favor, that is fine. This seems to be a reasonable change to the fee schedule, as it tracks with changes to the statute and it is compensation that makes sense from the applicants' perspective.

Mr. Clements stated that he is generally in favor of the change, as it reduces the overall cost to applicants to come before the board. He asked Ms. Fortson where they are in the process she just laid out.

Ms. Fortson replied that the proposed list of changes has been distributed to a few boards. She continued that the proposed changes will affect the ZBA, the Historic District Commission, the Planning Board, and the MPRC. Staff is bringing this proposed change before the MPRC because it is a Planning Board subcommittee. After getting feedback on the proposed changes from these four boards, staff will submit an ordinance to go through the City Council's review process.

Mr. Kopczynski asked what staff's recommended motion is. Ms. Fortson replied that the recommended motion is to approve the proposed changes. Mr. Kopczynski replied that it would be more accurate for the MPRC to recommend the City Council approve it. Ms. Brunner replied that under the statute, the different statutory boards have their own independent authority of City Council to adopt their own regulations and associated fees. She continued that in this instance, because the City also put the fees into the City Code, both have to adopt them, which is why the MPRC would need to adopt the fee and then send it to the Council to include it in the City Code.

Mr. Lussier asked if the MPRC approves this, or if the Planning Board has that statutory authority. Ms. Brunner replied that the Planning Board has delegated its authority to the MPRC for review of Minor Site Plan applications, and her understanding is that the MPRC can adopt its own Rules of Procedure. She thinks the MPRC should at least make a motion to approve (the fee schedule

changes). An argument could be made that this should be done through the Planning Board, but since the Planning Board is adopting it anyway, she thinks they will be covered.

Mr. Lussier stated that he understands the appeal of reducing staff burden and costs to applicants, but he thought the purpose of certified mail was to have written documentation not just that the letter went to the Post Office, but that the applicant received the notification. This (change) would not allow that. Ms. Brunner replied that the benefit of certified mail is that you get both a confirmation that the letter was sent and that the letter was received. With Certificate of Mailing, you get proof that the letter was sent, which is all State law requires. She continued that staff received feedback from members of the public saying they do not like the certified mail, such as a person expressing dismay that they did not know about a public hearing because they did not get a chance to go to the Post Office to get their letter. Staff have received feedback from the public about the difficulty of either having to be home when the letter arrives to sign for it or to make a special trip to the Post Office. To address that, some communities require sending both, which they could consider. However, certified mail costs have continually increased. Certificate of Mailing is a lower staff burden, less expensive for the applicant, and meets the intent of State law.

Mr. Lussier replied that he does not think certified mail was ever intended to be cheap or convenient for anyone. He continued that it is a legal threshold they are trying to achieve. Essentially, the City does certified mailings to satisfy the lawyers. He asked whether this matter has to be resolved today, or if it can be postponed so they could seek the City Attorney's Office's opinion as to whether certificate of mail has the same benefits to the City as certified mail. Ms. Brunner replied that (these proposed changes) has been in the works for quite a while, and Community Development Department staff have talked with the City Attorney and the Assistant City Attorney, who are both in support. It meets the State law requirements, so legally speaking, there is no risk. Whether to use certified mailings or a Certificate of Mailing is up to the MPRC's preference. Her opinion is that Certificate of Mailing would serve the public better.

Mr. Clements stated that the Planning Board has already adopted the change to a Certificate of Mailing. He asked if the MPRC should vote on this today, or if this is the public introduction of the proposed change. Ms. Fortson replied that this is the public introduction. She continued that the adoption will be at the MPRC's next meeting.

Mr. Kopczynski stated that the intent is to notify people that there is action that will be taking place. He continued that the problem is they are using an 1890s approach, putting a notice in the newspaper and sending people letters. The majority of Keene property owners do not live at the address where the notifications are sent, and the people who are there have no idea what is going on. There are complete neighborhoods that have no idea what is going on. If there is an activity taking place on a piece of property, people on the record in a certain distance will get notified, or entities, companies, and LLCs. The City has to meet the statutory requirements. Many communities around the country have begun to post the properties in addition. Thus, anyone walking or driving by it knows that something is being proposed for that property and could weigh in. He would like to see the City's processes ultimately evolve that way, so they are getting as

much input out to the public as possible, not just the people who own property within 200 feet and might actually be living far away.

Mr. Lussier stated that his hesitation here is largely due to (what has happened with) some transportation projects. He continued that staff had multiple communications with tenants on a property, for example, and then when the time came for final decisions and actions, the property owner claimed they were never informed, because the City had been sending notifications to and talking with tenants instead of the property owner. And the City did not have a documentation that they had sent certified letters to the property owner.

Mr. Kopczynski stated that he thinks he and Mr. Lussier both have a point, and sometime, this needs to be worked out.

Ms. Brunner stated that she thinks they are covered there, because with the Certificate of Mailing, for every letter that goes out, they will have the sticker on the letter to show that the City sent those. They go to the Post Office and then the Post Office gives them back to the City. Thus, they have proof, in the project folder, that the City has sent all of the letters. If someone from a condo association, for example, were to come back and claim they were never notified, staff has the ability to demonstrate that they met all of the requirements of State law.

Ms. Brunner stated that the Chair raises a good question about the fact that there may be people within the 200-foot radius or just in the general community who may not know about it. She continued that she thinks this (topic of on-site postings) might be a conversation for the Planning Board to have in the future, but she also thinks staff is doing a better job now of publicizing online and through social media, which she hopes people are paying attention to.

Mr. Kopczynski replied that he does not disagree with any of those points. He continued that the objective is to inform, and they should do everything they can to do so. His point is that many people are affected by these decisions and are not necessarily being taken into consideration by the processes.

Mr. Lussier stated that he thinks there are two different objectives. He continued that one is to inform the public, which he thinks the City does a great job with, communicating through multiple channels. The other objective is for the City to protect itself legally, and his concern is that this proposed change might not do that as well as the current practice does.

6) **Staff Updates**

Mr. Kopczynski asked if there were any updates from staff. Ms. Fortson replied no.

7) **New Business**

Ms. Brunner stated that the Master Plan Update project is underway. A community survey is out, and a think tank workshop is coming up, as well as a visioning workshop. The community survey is for anyone connected to Keene, whether they live, work, or visit here. She will ask staff to send the survey link to the MPRC members, and it would be great if MPRC members could encourage everyone in their departments to fill out the survey. Responses from people who work in Keene would be really helpful.

8) Upcoming Meeting Dates

May - 2nd Monthly MPRC Meeting – May 16, 2024 at 10:00 am (*if needed*)

June - Pre-submission Meeting – June 6, 2024 at 9:00 am

June - 1st Monthly MPRC Meeting – June 6, 2024 at 10:00 am

June – 2nd Monthly MPRC Meeting – June 20, 2024 at 10:00 am (*if needed*)

Mr. Lussier asked if the only reason to meet on May 16 would be to vote on plans in need of final approval. Ms. Fortson replied yes, if Mr. Phippard is able to address the conditions of approval for the Bergeron Mechanical application. Mr. Lussier asked if the May 16th meeting would be canceled if Mr. Phippard is not ready by then, and then the MPRC could address the fee schedule changes in June. Ms. Fortson replied that she thinks that is okay. Ms. Brunner replied that her only question is the schedule for the other boards. She continued that if the MPRC has no need to meet again in May other than to vote on the fee schedule change and if there is no rush for that, she does not see why they could not just wait until June. Mr. Clements replied that the only rush would be to get the Cottage Court fee on the books for the Planning Board. He continued that being said, HDC is not meeting until June, so the HDC's part of this equation would not be done in May.

Mr. Kopczynski stated that it seems unusual to him to have a condition that you have to get a permit when you are approving something related to the site. Ms. Brunner replied that it goes back to when the project was originally approved and then voided because it did not meet Zoning, because the sign regulations are in the Zoning Code. She continued that the MPRC only has jurisdiction over applications that fully comply with Zoning. They think this probably complies with Zoning but will not know for sure until the sign permit is submitted and staff can do the calculations. Mr. Kopczynski replied that he is okay with it, but it just seemed unusual. He is not second-guessing anything.

9) Adjournment

There being no further business, Mr. Kopczynski adjourned the meeting at 10:30 AM.

Respectfully submitted by,
Britta Reid, Minute Taker

Reviewed and edited by,

MPRC Meeting Minutes
May 2, 2024

ADOPTED

Megan Fortson, Planning Technician