

CITY OF LEWISTON
PLANNING BOARD MEETING
Monday, November 23, 2015 – 5:30 P.M.
City Council Chambers – First Floor
Lewiston City Building
27 Pine Street, Lewiston, ME

AGENDA

I. ROLL CALL

II. ADJUSTMENTS TO THE AGENDA

III. CORRESPONDENCE

IV. PUBLIC HEARINGS:

- a) A request by Robert F. Faunce on behalf of Cameron McKay for a petition to amend the Lewiston Zoning and Land Use Code to rezone a portion of the Marketplace Mall property at 675-677 Main Street.
- b) A proposed amendment to Appendix A, Article V, Section 3(z) of the Zoning and Land Use Code to allow single lots developed with three or more principal structures in residential use within a shoreland zoning district the ability to be divided to create new lots for each of the individual principal structures in residential use.

V. OTHER BUSINESS:

- a) Comprehensive Plan Recommendations
- b) Any other business Planning Board Members may have relating to the duties of the Lewiston Planning Board.

VI. READING OF THE MINUTES: Motion to adopt the November 9, 2015 draft minutes

VII. ADJOURNMENT



CITY OF LEWISTON

Department of Planning & Code Enforcement



TO: Planning Board
FROM: David Hediger, City Planner
DATE: November 19, 2015
RE: November 23, 2015 Planning Board Agenda Item IV(a)

A request by Robert F. Faunce of behalf of Cameron McKay for a petition to amend the Lewiston Zoning Map to rezone the rear portion of the Marketplace Mall property at 675-677 Main Street from Neighborhood Conservation "A" (NCA) to Community Business (CB) so that the entire property is within the CB District.

A petition has been submitted to rezone a portion of the lot at 675-677 Main Street from the Neighborhood Conservation "A" (NCA) district to the Community Business (CB) district pursuant to Article VII, Section 4 and Article XVII, Section 5 of the Zoning and Land Use Code. This property of approximately 4.9 acres contains the Marketplace Mall located in both districts. Variances were granted by the Board of Appeals on February 20, 1985 and March 6, 1985 for the construction of nonresidential structures within the residential district portion of the lot. The portion of the lot zoned NCA consists of approximately 2.3 acres with a 24,268SF building currently occupied by Sherm Arnold's Flooring, formerly Caswell's.

As noted in the applicant's request, with the rear portion of this lot located in the NCA district, and therefore the use of the property is legally nonconforming. This means the continued use of this portion of the lot zoned NCA may remain retail or a similar use without any zoning implications. However, the lots status being legally nonconforming may be viewed as encumbrance for financial institutions, leasing, and marketing opportunities. In addition, pursuant to Article VI, Section 4(c) of the Zoning and Land Use Code a nonconforming use, other than a single-family detached dwelling, two-family dwelling, or three-unit multifamily dwelling, that is damaged or destroyed by fire, flood, lightning, wind, structural failure or any other cause to an extent of 80 percent or more of the market value may be reconstructed, upon the receipt of development approval and a building permit, only in full conformance with the space and bulk regulations of the (NCA) district in which it is located; in this case, the NCA district for which a request for a new variance would be needed. Furthermore, if any nonconforming use of a building, structure or land is discontinued for a period of 12 consecutive months or more, abandonment is conclusively presumed and such use shall not be resumed, and only a use conforming to the provisions of the (NCA) district in which the property is located shall be made of such building, structure or land.

The petitioners request resolves the creation of a split zoned property and the granting of a use variance from over 30 years ago for the construction of a nonresidential structure in a residential district. In fact, the current variance provisions of the Zoning and Land Use Code do not allow for a use variance to be considered by the Board of Appeals (i.e. you cannot request a variance to construct or establish a use in a district in which the use is not permitted). The request to rezone

the rear portion of 675-677 Main Street cleans up and legitimizes an established use of property, allows for possible expansion and redevelopment, and increases the depth of a commercial zoned property in an appropriate area of the community already consisting of nonresidential properties.

ACTION NECESSARY

Make a motion pursuant to Article VII, Section 4 and Article XVII, Section 5 of the Zoning and Land Use Code to send a favorable recommendation for the City Council's consideration based upon a request by Robert F. Faunce of behalf of Cameron McKay to amend the Lewiston Zoning Map to rezone the rear portion of the Marketplace Mall property at 675-677 Main Street from Neighborhood Conservation "A" (NCA) to Community Business (CB) so that the entire property is within the CB District (including, if any, specific conditions raised by the Planning Board).

October 20, 2015

David Hediger
City Planner/Deputy Director Planning and Code Enforcement
City of Lewiston
27 Pine Street
Lewiston, ME 04240-7201

Re: Rezoning of 675-677 Main Street

Dear Mr. Hediger:

Cameron McKay has submitted a petition to amend the Lewiston Zoning and Land Use Code to rezone a portion of the Marketplace Mall property at 675-677 Main Street. Mr. McKay represents BRR Holdings, LLC, which owns the Caswell's building at the rear of the property now occupied by Sherm Arnold's Flooring and Kitchens, and Marketplace Investment group, LLC, which owns the land and the remainder of the Marketplace Mall building (see attached letter of authorization). The site has been in commercial use for many years and is now considered fully developed.

As shown on the attached aerial photo, the front portion of the lot and about half of the mall building and half of the parking spaces are in the Community Business (CB) District, which permits a wide range of retail and service uses. The remainder of the lot, parking spaces and mall building are in the Neighbor Conservation "A" (NCA) District, which does not allow commercial uses. This split zoning situation has been problematic for a number of years. The City of Lewiston issued a variance to construct the Caswell's building in 1985 and the balance of the Marketplace Mall building within the NCA District is considered legally non-conforming. Should that portion of the Marketplace Mall building within the NCA District become vacant for more than 12 months, it could lose its legally non-conforming status. Likewise, should any of the structures within the NCA District suffer damage equivalent to 80% or more of their value, they could not be rebuilt for commercial use. While the variance and the legally non-conforming status do not significantly affect on-going operations, they are important considerations when it comes to financing improvements, refinancing, leasing or marketing the property to investors.

That portion of the property proposed to be rezoned to the CB District is fully developed and complies with all requirements of the CB District including side and rear setbacks. As shown on the attached map, all adjacent lots within the NCA District are vacant with the exception of the residential properties along Montello Street. Nothing in this proposal will have any adverse impact on these residences nor will any buildings or parking areas be any closer to these properties.

We have reviewed the draft Comprehensive Plan and there is nothing in the document that contradicts the proposed amendment. I will attend the Planning Board's meeting on November 9, 2015 to answer any questions the Board or staff may have.

Best Regards,

A handwritten signature in cursive script, appearing to read "Robert F. Faunce".

Robert F. Faunce

AN ORDINANCE PERTAINING TO ZONING DISTRICT BOUNDARIES

Appendix A of the Code of Ordinances of the City of Lewiston, Maine, is hereby amended as follows:

APPENDIX A
ZONING AND LAND USE CODE
ARTICLE IV. ESTABLISHMENT OF DISTRICTS

Sec. 2 Zoning Map

The Zoning Map, adopted pursuant to this Section, is hereby amended to revise the boundaries of the Neighborhood Conservation "A" (NCA) District as shown on Exhibit "B", said property being located at 675-677 Main Street, Lewiston, Maine, so that the entire property is within the Community Business (CB) District.

REASONS FOR THE PROPOSED AMENDMENT

The reason for the proposed amendment is that the property at 675-677 Main Street is currently fully developed for commercial purposes yet it is divided by a zoning district boundary such that the rear portion of the property is in the NCA District, which does not allow commercial uses. While the uses and structures on the property are legally grandfathered, their non-conforming status is an issue for purposes of refinancing, sale, insurance, etc.

CONFORMANCE WITH THE COMPREHENSIVE PLAN

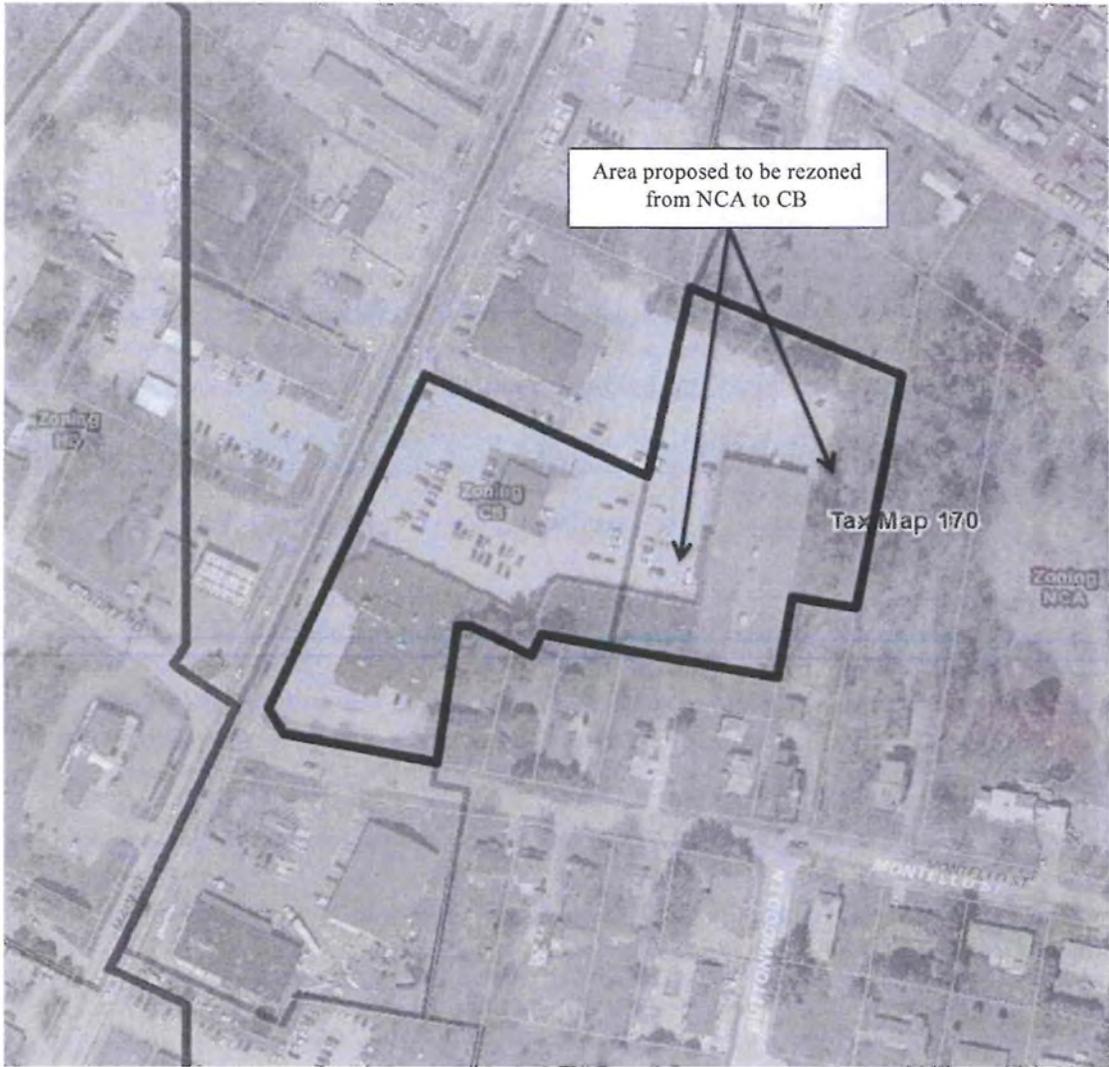
There are no provisions of the current or proposed comprehensive plan that are inconsistent with the proposed rezoning.

Robert F. Faunce, Authorized Representative

On _____, 2015, personally appeared the above named Robert F. Faunce and acknowledged the foregoing to be of their free act and deed.

Notary Public
Commission Expires:

Exhibit A
Rezoning Map

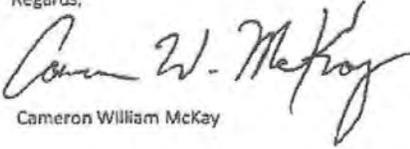


September 15th, 2015

To Whom It May Concern:

On behalf of BRR Holdings, LLC, I authorize Robert F. Faunce to request the City of Lewiston to rezone that portion of the Marketplace Mall property at 675-677 Main Street, Lewiston, that is currently within the Neighborhood Conservation "A" District to the Community Business District.

Regards,



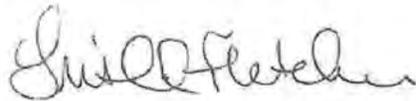
Cameron William McKay

September 16 , 2015

To Whom It May Concern:

On behalf of Marketplace Investment Group, LLC, I authorize Robert F. Faunce to request the City of Lewiston to rezone that portion of the Marketplace Mall property at 675-677 Main Street, Lewiston, that is currently within the Neighborhood Conservation "A" District to the Community Business District.

Regards,

A handwritten signature in cursive script that reads "Trisha Fletcher".

Trisha Fletcher

Partner, Marketplace investment Group, LLC

PETITION TO AMEND THE CITY OF LEWISTON
ZONING AND LAND USE CODE

Pursuant to Appendix A, Article XVII, Section 5, Amendments, of the City of Lewiston Zoning and Land Use Code, we the undersigned residents of the City of Lewiston, being eighteen (18) year of age or older, do hereby petition the City of Lewiston to amend the Zoning Map as shown in the exhibits attached hereto:

	SIGNATURE	PRINTED NAME	PHYSICAL STREET ADDRESS (No PO Boxes)	DATE
1		Linda Beaulieu	47 Ashmount St.	9-16-15
2		Suzanne Mitchell	27 Petanquill St	9-21-15
3		Robert D. Plann	3 Commons Dr	9/21/15
4		Jennifer Larocque Albert	32 Bardwell St	9/21/15
5		Joseph Duxner	11 Ryder St	9/30/15
6		Debra Sullivan	11 Ryder St	9/30/15
7		Jane Lynn	145 Pinewood St	10-8-15
8		JANET McCarthy	34 Rejane Ave	10-9-15
9		Robert McCarthy	34 Rejane Ave	10-9-15
10		Amy Lacroche	24 Brooks Ave	10-9-15
11		Betty Chadwick	216 Columbia	10-9-15
12		MARCEE B Paulin	1891 Lisbon Rd	10-15-15
13				
14				
15				
16				
17				
18				
19				
20				

CIRCULATOR-S VERIFICATION

I hereby verify that I am the Circulator of this petition that all the signatures to this petition were made in my presence, and to the best of my knowledge and belief, each signature is that of the person it purports to be, and each person is a resident of the City of Lewiston.

Signature of Circulator

Insha Fletcher
 Printed Name of Circulator

10/15/15
 Date

REGISTRAR'S CERTIFICATION

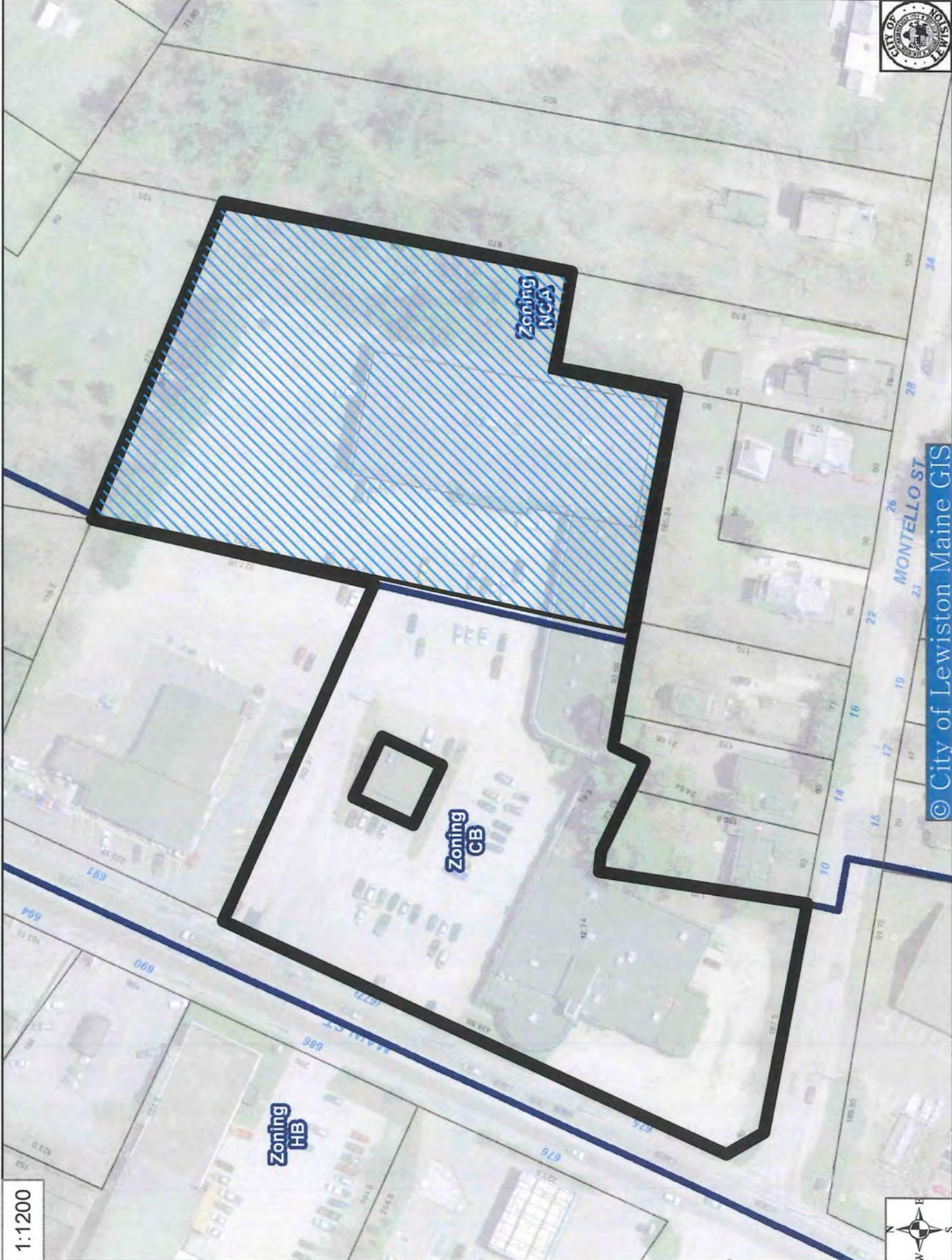
I hereby certify and verify that the names of all of the petitioners listed as valid appear on the voting list as registered voters in the City of Lewiston.

Total Valid: 11

Total Invalid: 1

Patrick Swett
Signature of Registrar/Deputy Registrar

Date: 10/28/15



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1:1200





CITY OF LEWISTON

Department of Planning & Code Enforcement



TO: Planning Board
FROM: David Hediger, City Planner
DATE: November 19, 2015
RE: November 23, 2015 Planning Board Agenda Item IV(b)

A proposed amendment to Appendix A, Article V, Section 3(z) of the Zoning and Land Use Code to allow single lots developed with three or more principal structures in residential use within a shoreland zoning district the ability to be divided to create new lots for each of the individual principal structures in residential use.

The City Council and Planning Board held a joint workshop on this issue on November 10, 2015. The purpose for this amendment to the Land Use Code is to allow single lots developed with three or more principal structures in residential use within a shoreland zoning district the ability to be divided to create new lots for each of the individual principal structures in residential use. This provision is limited to single lots developed with three or more principal structures in residential use constructed prior to the enactment of State Subdivision Law (i.e. September 23, 1971) limited to single-family detached dwellings, two-family dwellings, and three-unit multifamily dwellings.

Currently, it is not possible to divide a number of such lots given current shoreland zoning provisions for minimum lot size and shore frontage. The State of Maine's Mandatory Shoreland Zoning Act, 38 M.R.S.A. sections 435-449, requires all municipalities to adopt, administer, and enforce ordinances which regulate land use activities within 250 feet of great ponds, rivers, freshwater and coastal wetlands, including all tidal waters. The Act also requires the Board of Environmental Protection to establish minimum guidelines for such ordinances. The Act requires that municipalities adopt shoreland zoning ordinances consistent with, or no less stringent than, those minimum guidelines. The proposed amendment is consistent with the State's minimum guidelines, which allows for such divisions to occur as long as the lots created are as conforming as possible to the space and bulk requirements of the that community.

Please see the attached memorandum from Gildace Arsenault, Director of Planning and Code Enforcement dated November 5, 2015 for additional information.

On November 17, 2015 the City Council held a public meeting and voted unanimously on first passage that a public hearing on the proposed amendment be continued to their next regularly scheduled City Council meeting upon receiving a recommendation from the Planning Board.

ACTION NECESSARY

Make a motion pursuant to Article VII, Section 4 and Article XVII, Section 5 of the Zoning and Land Use Code to send a favorable recommendation for the City Council's consideration to adopt a proposed amendment to Appendix A, Article V, Section 3(z) of

the Zoning and land Use Code to allow single lots developed with three or more principal structures in residential use within a shoreland zoning district the ability to be divided to create new lots for each of the individual principal structures in residential use (including, if any, specific conditions raised by the Planning Board).

MEMORANDUM

TO: Mayor Robert E. Macdonald
Members of the City Council & Planning Board

FR: Gildace J. Arsenault, Director of Planning and Code Enforcement

RE: Franklin Property Trust, LLC Division of Land

DT: November 5, 2015

Attached please find the following documents:

A proposed ordinance amendment pertaining to the division of lots in the shoreland zone

An ordinance pertaining to the division of lots and the reconstruction of residential buildings

Planning board action of July 13, 2015 regarding an ordinance pertaining to the division of lots and the reconstruction of residential buildings

Map of Franklin Property Trust land to be divided

Memoranda dated June 4, 2015 and June 11, 2015

Consistent with the Franklin Property Trust, LLC and the City of Lewiston agreement dated December 16, 2014, the City Council enacted provisions to the Zoning and Land Use Code that became effective on August 13, 2015. These amendments to the Code permit the division of lots that contain three or more principal structures in residential use constructed prior to the enactment of State Subdivision Law (i.e. September 23, 1971). These amendments are limited to single-family detached dwellings, two-family dwellings, and three-unit multifamily dwellings and allow for the creation of lots that would not otherwise comply with space and bulk standards and where the principal residential structures would not otherwise satisfy space and bulk standards and/or parking requirements. These provisions primarily address the plight of many individual owners of single-family detached dwellings, two-family dwellings and three-unit multifamily dwellings situated on leased land where conventional financing is not available for either the purchase or maintenance of such real estate. These standards will in part serve to improve real estate in a number of locations throughout the City and will help address neighborhood deterioration.

In working with Franklin Property Trust, LLC to create individual residential house lots, staff has determined that shoreland area standards as per Article XII, Section 2 of the Zoning and Land Use Code prevent the division of some Franklin Trust, LLC lots located within the shoreland zone; therefore, in order to comply with the Franklin Property Trust, LLC and the City of Lewiston agreement dated December 16, 2014 an amendment to the Zoning and Land Use Code is necessary in order to permit the creation of lots that would not otherwise satisfy shoreland zoning provisions.

Given the above mentioned Franklin Property Trust, LLC and the City of Lewiston agreement, staff recommends that the Council conduct a first reading on this matter on November 17th and that it be scheduled for the Planning Boards consideration on November 23rd.

Staff will be in attendance at the November 10, 2015 joint City Council and Planning Board workshop to address any questions that you may have.

**AN ORDINANCE PERTAINING TO THE DIVISION OF LOTS WITHIN
THE SHORELAND ZONE**

THE CITY OF LEWISTON HEREBY ORDAINS:

Appendix A of the code of ordinances of the City of Lewiston, Maine is hereby amended as follows:

APPENDIX A

ZONING AND LAND USE CODE

ARTICLE V. ADMINISTRATION AND ENFORCEMENT

Sec. 3. General provisions.

- (z) Notwithstanding Appendix A, Article XI Section 23 of this Code, single lots developed with three or more principal structures in residential use, at the time of the division, may be divided to create new lots for each of the individual principal structures in residential use, provided that the following provisions can be met and satisfied:
1. All principal residential structures on the lot to be divided were constructed prior to the enactment of State Subdivision Law (i.e. September 23, 1971).
 2. All principal residential structures on the lot to be divided are single-family detached dwellings, two-family dwellings and three-unit multifamily dwellings.
 3. All new lots must, to the greatest extent practicable, comply with the applicable space and bulk requirements of Appendix A, Article XI Section 23 and Article XII, Section 2 of this Code. Whether the new lots meet this standard shall be in the reasonable judgment of the code enforcement director, whose approval shall be required.

REASONS FOR PROPOSED AMENDMENTS

The purpose for this amendment is to allow single lots developed with three or more principal structures in residential use within a shoreland zoning district the ability to be divided to create new lots for each of the individual principal structures in residential use. This provision is limited to single lots developed with three or more principal structures in residential use constructed prior to the enactment of State Subdivision Law (i.e. September 23, 1971) limited to single-family detached dwellings, two-family dwellings, and three-unit multifamily dwellings.

Currently, it is not possible to divide a number of such lots given current shoreland zoning provisions for minimum lot size and shore frontage. The State of Maine's Mandatory Shoreland Zoning Act, 38 M.R.S.A. sections 435-449, requires all municipalities to adopt,

administer, and enforce ordinances which regulate land use activities within 250 feet of great ponds, rivers, freshwater and coastal wetlands, including all tidal waters. The Act also requires the Board of Environmental Protection to establish minimum guidelines for such ordinances. The Act requires that municipalities adopt shoreland zoning ordinances consistent with, or no less stringent than, those minimum guidelines. The proposed amendment is consistent with the State's minimum guidelines, which allows for such divisions to occur as long as the lots created are as conforming as possible to the space and bulk requirements of the that community.

CONFORMANCE WITH COMPREHENSIVE PLAN

The City Council hereby determines that the changes to the Zoning and Land Use Code are in conformance with the Comprehensive Plan for the following reasons:

1. Enhance the image of Lewiston and its proud heritage by improving the gateways to the City, enhancing the visual quality of the riverfront and the canal system, and fostering the continued conversion of vacant space to productive reuses that will contribute to the revitalization of the entire Downtown and City (Historic Preservation, Goals, #3).
2. Encourage and promote safe, affordable, decent housing opportunities for all Lewiston citizens (Housing, Goals, #1).
3. Continue to allow a wide range of housing types in the Zoning and Land Use Code, and explore the need and feasibility of expanding the opportunity for the creation of single and two-family homes, multi-family housing, mixed-use housing, and mobile homes through code amendments and rezoning's (Housing, Policy 1, Strategy H1).
4. Continue to update the City Ordinances to better plan for growth and incorporate incentives for development which achieve important community goals including the prevention of "sprawl" (Long Range Planning, Policy 3).
5. Encourage and promote affordable, decent housing opportunities for all Lewiston citizens and continue to allow a diverse range of housing types in the community (Long Range Planning, Policy 5).

**AN ORDINANCE PERTAINING TO THE DIVISION OF LOTS AND THE
RECONSTRUCTION OF RESIDENTIAL BUILDINGS**

THE CITY OF LEWISTON HEREBY ORDAINS:

Appendix A of the code of ordinances of the City of Lewiston, Maine is hereby amended as follows:

APPENDIX A

ZONING AND LAND USE CODE

ARTICLE V. ADMINISTRATION AND ENFORCEMENT

Sec. 3. General provisions.

- (a) All buildings and other structures shall be so located and arranged on lots as to provide safe and convenient access for fire protection, servicing and off-street parking and loading located on the premises. No building or structure may be constructed or erected on any lot which does not have at least fifty (50) feet of frontage or twenty-five (25) feet of frontage for lots located in the Centreville and Mill Districts.

However, lots of record that existed prior to December 9, 1987, which were legally established having less than fifty (50) feet of frontage, may apply for a variance pursuant to Article VIII, section 4(2) of this Code in order to have a building or structure constructed or erected on said lot.

- (c) No division of land shall be made whereby any lot created thereby is smaller ~~that~~ than the minimum size required for the district in which said lot is located, or has less frontage, setback or yard space than the minimum required, except as provided by Article VI and subsections (w) and (z), below.

In addition, the following criteria apply to the creation of all lots unless demonstrated adequately to the reviewing authority that the application of one (1) or more of the following criteria is not practical:

- (1) If a lot on one (1) side of a stream, road, or other similar barrier fails to meet the minimum lot size required by the zoning ordinance, it may not be extended to the other side of the barrier to meet the minimum lot size or for the purposes of individual, on-site waste disposal.
- (2) Lots in which parcels of land such as narrow strips are used or are joined to other parcels to meet minimum lot size or frontage requirements, or other reconfiguration of parcels which create irregular-shaped lots (examples of such lots are illustrated in the Site Plan Review Ordinance and Design Guidelines) are prohibited.

- (3) For all proposed lots the lot width shall be at least equal to the minimum frontage requirement.
 - (4) All proposed lots must be able to completely contain within its boundaries an area as would be defined by a circle with minimum diameter equal to the required minimum frontage for the district.
 - (5) To the extent possible, lots will be oriented in order to make maximum use of direct sunlight and where feasible, side lot lines shall be at right angles to street lines (or radial to curving street lines.)
- (e) Except as provided in subsection w and z below, no lot may be reduced in size if, as a result, the setbacks, yards, or other open spaces are smaller than prescribed by this Code. No setback, yard, or other open space may be counted as required open space for more than one (1) building.
- (z) Notwithstanding Appendix A, Article XI Section 23 of this Code, single lots developed with three or more principal structures in residential use, at the time of the division, may be divided to create new lots for each of the individual principal structures in residential use, provided that the following provisions can be met and satisfied:
1. All principal residential structures on the lot to be divided were constructed prior to the enactment of State Subdivision Law (i.e. September 23, 1971).
 2. All principal residential structures on the lot to be divided are single-family detached dwellings, two-family dwellings and three-unit multifamily dwellings.
 3. All new lots must, to the greatest extent practicable, comply with the applicable space and bulk requirements of Appendix A, Article XI Section 23 of this Code. Whether the new lots meet this standard shall be in the reasonable judgment of the code enforcement director, whose approval shall be required.

ARTICLE VI. NONCONFORMANCE

Sec. 3. Nonconforming structures

- (b) *Reconstruction.* A nonconforming structure which is damaged or destroyed by fire, flood, lightning, wind, structural failure or any other cause to an extent less than 80 percent of the market value of the structure at the time of such damage or destruction may be reconstructed, ~~as it existed;~~ The reconstructed structure need not comply with the space and bulk regulations of the district in which it is located, Article VI, Section 2, or Article XII, Section 17(d), but shall be the same size or less than the previous structure, and comply with all other requirements of this Code.

~~but if the damage equals or exceeds~~ A nonconforming structure, other than a single-family detached dwelling, two-family dwelling, or three-unit multifamily dwelling, that is damaged or destroyed by fire, flood, lightning, wind, structural failure or any other cause to an extent of 80 percent or more of the market value, it may be reconstructed only in conformance with space and bulk regulations of the district in which it is located.

A nonconforming single-family detached dwelling, two-family dwelling, or three-unit multifamily dwelling damaged or destroyed by fire, flood, lightning, wind, structural failure or other cause to an extent of 80 percent or more of the market value of the structure at the time of such damage or destruction may be reconstructed. The reconstructed structure need not comply with the space and bulk regulations of the district in which it is located, Article VI, Section 2, or Article XII, Section 17(d), but shall be the same size or less than the previous structure and comply with all other requirements of this Code. Any reconstruction permitted by this subsection shall begin within one year and be completed within two years of the date of such damage or destruction. The board of appeals may extend the period for reconstruction upon a showing that work could not begin or be completed for reasons outside the control of the owner. The request to the board must be filed before the expiration of the applicable time and not more than a one year extension shall be granted.

- (1) A residential structure which is located in a shoreland area and is nonconforming because it; (a) does not meet the current space and bulk standards of the zoning district; or (b) does not meet the shoreline setback as outlined under article XII, subsection 2(d)(1), and which is damaged or destroyed by 50 percent or less of the market value of the structure before such damage or destruction, excluding normal maintenance or repair, may be reconstructed, in place, as it existed. However, if the structure is removed, or damaged or destroyed by more than 50 percent of the market value of the structure before such damage or destruction, it may be reconstructed or replaced, provided that a permit is obtained within one year of the date of said removal, damage or destruction, and that such reconstruction or replacement is in compliance with the water setback requirement to the greatest practical extent as determined by the code enforcement director. In no case shall a structure be reconstructed or replaced so as to increase its nonconformity.
- (2) In determining whether the building enlargement, reconstruction or replacement meets the setback requirements, as outlined under article XII, subsection 2(d)(1), to the greatest practical extent, the following criteria shall be considered:
 - a. The size of the lot;
 - b. The slope of the land;
 - c. The potential for soil erosion;

- d. The location of other structures on the property and on adjacent properties;
- e. The location of the septic system, and other on-site soils suitable for septic systems; and
- f. The type and amount of vegetation to be removed in order to accomplish the enlargement, reconstruction or replacement.

Sec. 4. Nonconforming uses.

- (f) *Replacement of nonconforming use.* A nonconforming use which is damaged or destroyed by fire, flood, lightning, wind, structural failure or other cause to an extent less than 80 percent of the market value of the structure at the time of such damage or destruction may be reconstructed, ~~as it existed.~~ The reconstructed use need not comply with the space and bulk regulations of the district in which it is located, Article VI, Section 2, or Article XII, Section 17(d), but shall be the same size or less than the previous structure, and the intensity of use shall not be made more nonconforming.

~~but if the damage equals or exceeds~~ A nonconforming use, other than a single-family detached dwelling, two-family dwelling, or three-unit multifamily dwelling, that is damaged or destroyed by fire, flood, lightning, wind, structural failure or any other cause to an extent of 80 percent or more of the market value, it may be reconstructed, upon the receipt of development approval and a building permit, only in full conformance with the space and bulk regulations of the district in which it is located. Any reconstruction of a nonconforming use shall be the same size or less than the previous structure, and the intensity of use shall not be increased. Any reconstruction permitted by this subsection shall be begun ~~be begun~~ begin within one year and be completed within two years of the date of such damage or destruction. The board of appeals may extend the period for reconstruction upon a showing that work could not begin or be completed for reasons outside the control of the owner. ~~The request to the board must be filed before the expiration of the applicable time and not more than a one year extension shall be granted.~~

A nonconforming use of a single-family detached dwelling, two-family dwelling or three-unit multifamily dwelling damaged or destroyed by fire, flood, lightning, wind, structural failure or other cause to an extent of 80 percent or more of the market value of the structure at the time of such damage or destruction may be reconstructed. The reconstructed use need not comply with the space and bulk regulations of the district in which it is located, Article VI, Section 2, or Article XII, Section 17(d), but shall be the same size or less than the previous use, and the intensity of use shall not be made more nonconforming. Any reconstruction permitted by this subsection shall be begun within one year and completed within two years of the date of such damage or destruction. The board of appeals may extend the period for reconstruction, upon a showing that work could not begin or be completed for reasons outside the control of the owner. The request to the board must be filed before the expiration of the applicable time and not more than a one year extension shall be granted.

REASONS FOR PROPOSED AMENDMENTS

The purpose for these amendments is to allow for the division of lots that contain three or more principal structures in residential use constructed prior to the enactment of State Subdivision Law (i.e. September 23, 1971) limited to single-family detached dwellings, two-family dwellings, and three-unit multifamily dwellings. Currently, it is not possible to divide a number of such lots given use, space and bulk and parking standards. These amendments will permit the creation of lots that would not otherwise comply with space and bulk standards and where the principal residential structures would not otherwise satisfy space and bulk standards and/or parking requirements. These provisions primarily address the plight of a number of individual owners of single-family detached dwellings, two-family dwellings and three-unit multifamily dwellings situated on leased land whereby conventional financing is not available for either the purchase or maintenance of such real estate. These standards will in part serve to improve real estate in a number of locations throughout the City and will help address neighborhood deterioration. In addition, these provisions provide for a relaxation of existing standards that provide for the replacement of such principal residential structures that will be situated on nonconforming lots, nonconforming uses and uses that do not comply with parking provisions.

CONFORMANCE WITH COMPREHENSIVE PLAN

The City Council hereby determines that the changes to the Zoning and Land Use Code are in conformance with the Comprehensive Plan for the following reasons:

1. Enhance the image of Lewiston and its proud heritage by improving the gateways to the City, enhancing the visual quality of the riverfront and the canal system, and fostering the continued conversion of vacant space to productive reuses that will contribute to the revitalization of the entire Downtown and City (Historic Preservation, Goals, #3).
2. Encourage and promote safe, affordable, decent housing opportunities for all Lewiston citizens (Housing, Goals, #1).
3. Continue to allow a wide range of housing types in the Zoning and Land Use Code, and explore the need and feasibility of expanding the opportunity for the creation of single and two-family homes, multi-family housing, mixed-use housing, and mobile homes through code amendments and rezoning's (Housing, Policy 1, Strategy H1).
4. Continue to update the City Ordinances to better plan for growth and incorporate incentives for development which achieve important community goals including the prevention of "sprawl" (Long Range Planning, Policy 3).
5. Encourage and promote affordable, decent housing opportunities for all Lewiston citizens and continue to allow a diverse range of housing types in the community (Long Range Planning, Policy 5),



City of Lewiston
Planning & Code Enforcement
Gil Arsenault, Director
MEMORANDUM



To: City Clerk's Office
City Council Members
Mayor Robert E. Macdonald

From: David Hediger

Date: July 14, 2015

Subject: Planning Board Action

The Planning Board took the following action at their meeting held on July 13, 2015 regarding an amendment to the Zoning and Land Use Code.

The following motion was made:

MOTION: by **Michael Marcotte** pursuant to Article VII, Section 4(h) and Article XVII, Section 5 of the Zoning and Land Use Code to send a favorable recommendation to the City Council to adopt a proposed amendment to Article V. Administration and Enforcement and Article VI. Nonconformance of the Code of Ordinances of the City of Lewiston. Second by **Paul Madore**.

VOTED: 7-0 (Passed)

Note: While supportive of the proposed ordinance, some Planning Board members expressed concerns of the Board not having been involved with the terms and requirements of the joint agreement made with Franklin Property Trust requiring the need for a zoning and land use amendment and that more outreach to the homeowners should have occurred.

c: Ed Barrett, City Administrator
Planning Board Members

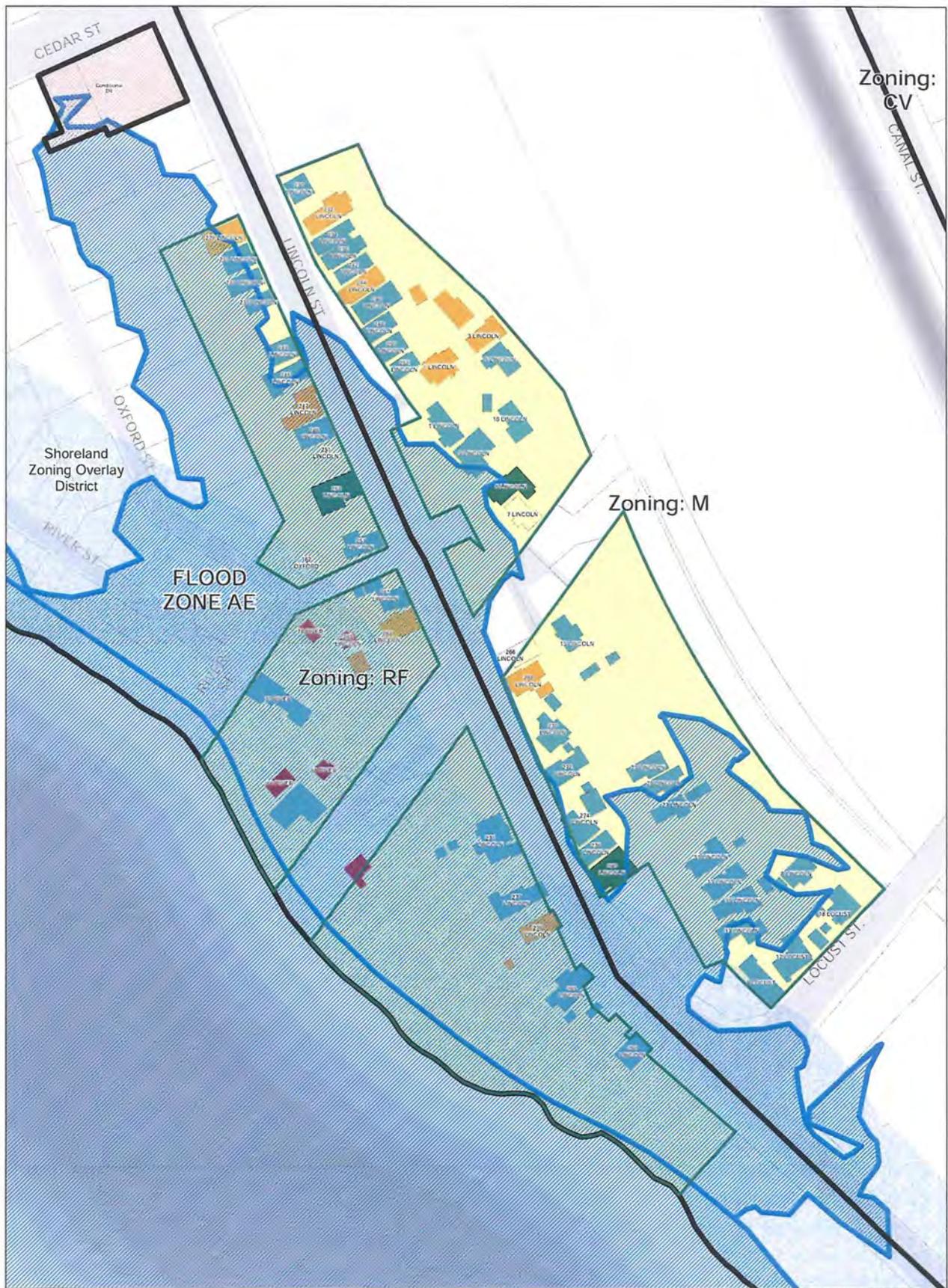


***Franklin Property Trust Land - Lewiston, Maine**

- Legend**
- Public Easements
 - Franklin Land
 - Zoning - Conditional
 - Zoning Districts

*Map has been clipped to extents of all Franklin Property Land within City for clarity.





Franklin Property Trust Land - Lewiston, Maine

Lincoln Steet/Drive Properties

Zoning Districts and Flood Hazard Areas

1 inch = 50 feet

Legend

- Single Family and Accessory Structures on Franklin Property Land
- Two Family and Accessory Structures on Franklin Property Land
- Three Family and Accessory Structures on Franklin Property Land
- Non-Residential Use Buildings on Franklin Property Land
- Franklin Land
- Zoning Districts
- Shoreland Zoning
- Flood Zones A and AE



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MEMORANDUM

TO: Mayor Robert E. Macdonald
Members of the City Council

FR: Gildace J. Arsenault, Director of Planning and Code Enforcement

RE: Franklin Property Trust, LLC Division of Land

DT: June 4, 2015

Background

On December 16, 2014, Franklin Property Trust, LLC (FT) and the City of Lewiston (City) entered into an agreement regarding the demolition of a number of dangerous buildings located wholly or partly on land owned by FT. In addition to these dangerous buildings, the agreement contained provisions for the subdivision of FT land. The agreement states that FT shall engage a surveyor and/or other consultants at its expense to prepare a plan of subdivision of the land. The plan shall be subject to municipal approval which shall not be unreasonably withheld or conditioned. The agreement also states that, if the City's current zoning ordinance does not permit subdivision pursuant to the plan or if the Planning Board denies FT's application, Code Enforcement and the City Administrator will propose an amendment to the City's zoning ordinance to allow the subdivision and will diligently pursue the adoption of such amendment.

At a March 10, 2015 workshop, the Council discussed the zoning and land use issues associated with the creation of individual house lots and some concern was expressed that most of the lots created would not satisfy one or more provisions of the Zoning and Land Use Code. Since that workshop, staff has evaluated the individual lots that would result from the division of Franklin Property Trust land. The evaluation was based on our municipal maps and assumptions were made as to the likely locations of the property lines for the individual homes.

Creation of Individual Parcels

Our Zoning and Land Use Code states that no division of land shall be made where any lot is smaller than the minimum size required for the district in which the lot is located or has less than the minimum required frontage, setback or yard space. The majority of the proposed individual house lots will not satisfy one or more of the minimum required space and bulk requirements (i.e. frontage, setbacks, yards, etc.).

Therefore, the first action needed in order to satisfy the FT/City agreement is to amend the Code to allow for the creation of new nonconforming lots to include nonconforming structures. We are preparing an amendment to accomplish this. That amendment will be drafted so as to limit its applicability so that it does not undermine our overall subdivision standards. For example, it may be limited only to situations existing before

the adoption of our subdivision standards and where multiple residential buildings are located on land in single ownership.

Non-Conforming Uses

Eight-eight (88) lots will be created with a combination of single family homes, two family homes, or three unit multifamily buildings. Seventy-eight (78) of these lots will be located in zoning districts (Mill District, Riverfront District, Neighborhood Conservation "A" District, Urban Enterprise District, and Community Business District) that do not permit the existing residential uses (i.e. nonconforming uses).

In accordance with our Code, a nonconforming use that is located in a structure that is damaged to an extent less than 80 percent of the market value of the structure may be reconstructed as it existed; but, if the damage equals or exceeds 80 percent of the market value, it may only be reconstructed, upon the receipt of development approval and a building permit, in full conformance with the space and bulk regulations of the district in which it is located. Any reconstruction of a nonconforming use must be no larger than the previous structure, and the intensity of use shall not be increased. Any reconstruction permitted must be begun within one year and be completed within two years of the date of the damage or destruction. The board of appeals may extend the period for reconstruction upon a showing that work could not begin or be completed for reasons outside the control of the owner.

We would propose an amendment that would eliminate the 80% standard, allowing any residence to be rebuilt in the same size and footprint that previously existed.

Nonconforming Lots

Nine (9) of the properties that will be created will be on lots that are nonconforming to such an extent that the homes, as a matter of right, will not be able to be replaced if damaged or destroyed to an extent that equals or exceeds eighty (80) percent of the market value.

Potential Remedy

Should the Council desire, a provision could be added to the Zoning and Land Use Code to provide by right an opportunity to replace the structure, again to the same size and footprint as previously existed. Any reconstruction would have to begin within one year and be completed within two years of the date of damage or destruction. It is my recommendation that any such provision be limited to single-family detached dwellings, two-family dwellings, and three unit multifamily dwellings since this provision would be applicable throughout the City.

These changes would basically allow any destroyed one, two, or three unit structure anywhere in the City to be rebuilt provided that it is no larger than the previous structure.

Mr. Hediger and I will be in attendance at the March 10, 2015 workshop to answer any questions that you may have.

MEMORANDUM

TO: Mayor Robert E. Macdonald
Members of the City Council

FR: Gildace J. Arsenault, Director of Planning and Code Enforcement

RE: Franklin Property Trust, LLC Division of Land

DT: June 11, 2015

Consistent with the Franklin Property Trust, LLC and the City of Lewiston agreement dated December 16, 2014, staff has prepared the requisite amendments to the Zoning and Land Use Code to permit the division of Franklin Property Trust land. If enacted, the proposed amendments will permit the division of lots that contain three or more principal structures in residential use constructed prior to the enactment of State Subdivision Law (i.e. September 23, 1971) limited to single-family detached dwellings, two-family dwellings, and three-unit multifamily dwellings. Currently, it is not possible to divide a number of such lots given use, space and bulk, and parking standards. These amendments will allow for the creation of lots that would not otherwise comply with space and bulk standards and where the principal residential structures would not otherwise satisfy space and bulk standards and/or parking requirements.

These provisions primarily address the plight of a number of individual owners of single-family detached dwellings, two-family dwellings and three-unit multifamily dwellings situated on leased land whereby conventional financing is not available for either the purchase or maintenance of such real estate. These standards will in part serve to improve real estate in a number of locations throughout the City and will help address neighborhood deterioration. In addition, these provisions provide for a relaxation of existing standards that regulate the replacement of such principal residential structures that will be situated on nonconforming lots, nonconforming uses, and uses that do not comply with parking provisions. As proposed, these amendments will be applicable throughout the community.

Staff will be in attendance at the June 16, 2015 Council meeting to address any questions that you may have.

Thank you.