



CITY OF PORTSMOUTH
PLANNING DEPARTMENT

MEMORANDUM

To: Planning Board
From: Juliet T.H. Walker, Planning Director *JTW*
Jillian Harris, Planner 1
Subject: Staff Recommendations for the June 27, 2019 Planning Board Meeting
Date: 06/21/19

I. PUBLIC HEARINGS – NEW BUSINESS

- A. The application of **The Society for the Protection of Forests, Owner** and **Altus Engineering, Inc., Applicant** for property located at **400 Little Harbor Road** requesting a Wetland Conditional Use Permit under Section 10.1017 of the Zoning Ordinance to demolish the entire existing house along with existing pavement surfaces resulting in approximately 1,400 square feet of impact in the tidal wetland buffer. Said property is shown on Assessor Map 203 as Lot 8 and lies within the Rural (R) District.



Description

The applicant is requesting conditional use approval to demolish the existing building including the entire house along with existing pavement surfaces. Only a portion of the house is in the tidal wetland buffer where there will be an impact of approximately 1,400 square feet.

Conservation Commission Review

According to *Article 10 Section 10.1017.50* the applicant must satisfy the following conditions for approval of this project.

1. *The land is reasonably suited to the use activity or alteration.* This project proposes to remove a house from the wetland buffer. The proposal will result in a reduction of impervious surface in the tidal buffer and an increase in open space on this property.
2. *There is no alternative location outside the wetland buffer that is feasible and reasonable for the proposed use, activity or alteration.* Giving this is a demolition project there is no other location possible.
3. *There will be no adverse impact on the wetland functional values of the site or surrounding properties.* The project will result in a removal of an impervious area from the buffer. There is potential for temporary disturbance of the site during construction. The applicant has proposed a silt fence to prevent any erosion impact to the wetland area. If the silt fence is installed correctly and monitored during construction and until the site is stabilized any impacts to Sagamore Creek can be avoided.
4. *Alteration of the natural vegetative state or managed woodland will occur only to the extent necessary to achieve construction goals.* The proposed project will not impact existing vegetation. New lawn area is proposed where the house and paved area currently exist.
5. *The proposal is the alternative with the least adverse impact to areas and environments under the jurisdiction of this section.* Overall this proposal will result in a temporary impact to the wetland buffer but will result in a reduction of impervious surface in the buffer.
6. *Any area within the vegetated buffer strip will be returned to a natural state to the extent feasible.* The proposal includes new lawn area where building currently exists. The applicant could consider adding new wetland buffer plantings in the tidal wetland buffer.

The Conservation Commission reviewed this application at the June 12, 2019 meeting and voted unanimously to recommend approval with the following stipulations:

1. That the applicant consider a plan to incorporate plantings along the shoreline edge.
2. A plan be provided for how invasive species will be controlled as part of the demolition.
3. That silt fence or silt sock be installed prior to demolition and stay in place until the site is stabilized.

As Item 1 was for the applicant's consideration, staff is not recommending that this be incorporated as a condition of approval.

Planning Department Recommendation

1. *Vote to grant the wetland conditional use permit with the following stipulations:*
 - 1.2) *A plan shall be provided to the Planning Department indicating how invasive species will be controlled as part of the demolition.*
 - 1.3) *A silt sock shall be installed prior to demolition and stay in place until the site is stabilized.*

I. PUBLIC HEARINGS – NEW BUSINESS (Cont.)

- B. The application of **Paul Mullen, Owner** and **Savoie Nolan Architects, LLC, Applicant** for property located at **97 Eastwood Drive** requesting Conditional Use Permit approval in accordance with Section 10.814 of the Zoning Ordinance for the addition of a 746 sq. ft. Attached Accessory Dwelling Unit to the first floor of an existing home. Said property is shown on Assessor Map 288 as Lot 3-20 and lies within the Single Residence B (SRB) District.



Description

The applicant requests a conditional use permit to create an attached accessory dwelling unit (AADU) in an existing residential structure.

Because the resulting unit will be an attached accessory dwelling unit (AADU), the provisions of Sec. 10.814.40 apply.

Section 10.521 Dimensional Requirements

	Required	Provided / Proposed
Min. lot area (sf)	15,000	34,850
Lot area / dw unit (sf)	15,000	17,425
Street frontage (ft)	100	182.5
Lot depth (ft)	100	326
Primary front yard (ft)	30'	42.5'
Left side yard	10'	48.75
Right side yard (ft)	10'	19.5'
Rear yard (ft)	30'	203.75'
Height (ft)	35;	30'
Bldg coverage (%) max.	20%	11.2%
Open Space (%) min.	40%	82.3%
Parking (#)	3	3+

In addition to the dimensional requirements of Section 10.521 above, the Ordinance requires that an AADU comply with the following standards (Section 10.814.30 and 10.814.40).

Required Standard	Planning Department Comments
The principal dwelling unit and the accessory dwelling unit shall not be separated in ownership.	The applicant has indicated compliance with this requirement, verification will be required in order for a certificate of use to be issued.
Either the principal dwelling unit or the accessory dwelling unit shall be occupied by the owner of the dwelling.	The applicant has indicated compliance with this requirement, verification will be required in order for a certificate of use to be issued.
Neither the principal dwelling nor the accessory dwelling unit shall be used for any business, except that the property owner may have a home occupation use in the unit that he or she occupies as allowed or permitted elsewhere in this Ordinance.	The applicant has indicated compliance with this requirement.
Where municipal sewer service is not provided, the septic system shall meet NH Water Supply and Pollution Control Division requirements for the combined system demand for total occupancy of the premises.	The existing septic system is designed for 4-Bedroom Occupancy. The applicant intends to convert a bedroom in the existing principal dwelling unit to a den in order to maintain the 4-bedroom load design. Documentation of approval from NHDES will be required in order for a certificate of use to be issued.

Required Standard	Planning Department Comments
An interior door shall be provided between the principal dwelling unit and the ADU.	An interior door is being provided.
The ADU shall not have more than two bedrooms and shall not be larger than 750 sq. ft. gross floor area.	The ADU is proposed to have one bedroom and to be 746 s.f.
Any exterior changes to the single-family dwelling shall maintain the appearance of a single-family dwelling.	The appearance of a single-family home shall be maintained with a primary entry and secondary entry along the street façade.
No portion of the AADU shall be closer to the front lot line than the existing front wall of the principal dwelling unit.	The AADU is proposed to be aligned with the front wall of the principal unit.
An exterior wall of the AADU that faces a street on which the lot has frontage shall comprise no more than 40% of the total visible façade area of the dwelling as seen from that street.	The front wall of the AADU facing the street is proposed to comprise 16% of the total façade as seen from the street.
The addition to or expansion of the existing single-family dwelling may include an increase in building height only as an upward expansion of the existing principal building with no increase in building footprint.	The proposed AADU addition does not increase the existing building height.
The building height of any addition or expansion that includes an increase in building footprint shall be less than the building height of the existing principal building.	The proposed AADU is less than the building height of the existing principal building.
The AADU shall be architecturally consistent with the existing principal dwelling through the use of similar materials, detailing, roof pitch, and other building design elements.	The AADU is proposed to match architectural features of the existing principal dwelling, including roof pitch, materials and detailing.

In order to grant a conditional use permit for an ADU, the Planning Board must first make the following findings (Sec. 10.814.60):

Required Findings	Planning Department Comments
1. Exterior design of the ADU is consistent with the principal dwelling on the lot.	The AADU is proposed to be consistent with the design of the principal dwelling.
2. The site plan provides adequate open space, landscaping and off-street parking for both the ADU and the primary dwelling.	Both the primary dwelling and the AADU will have access to usable open space and landscaping. Required total parking is 3 spaces and 3+ spaces are provided.

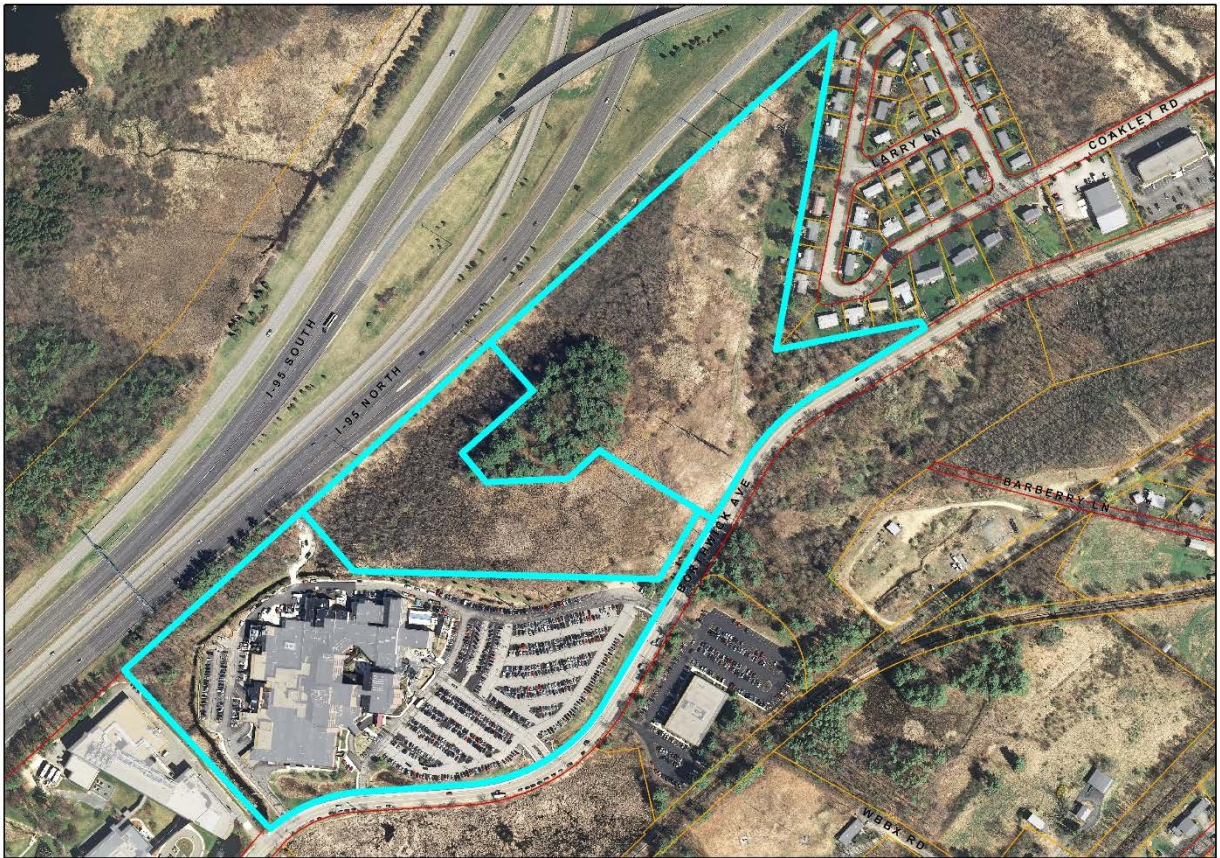
Required Findings	Planning Department Comments
3. The ADU will maintain a compatible relationship to adjacent properties in terms of location, design and off-street parking layout and will not significantly reduce the privacy of adjacent properties.	The proposed AADU should not be incompatible with adjacent properties, nor have a significant impact on the privacy of adjacent properties.
4. The ADU will not result in excessive noise, traffic or parking congestion.	The applicant is providing 3 parking spaces. The location of this unit in an established residential neighborhood is unlikely to create a noticeable change in traffic.

Planning Department Recommendation

- 1) *Vote to find that the application satisfies the requirements of 10.814.60.*
- 2) *Vote to grant the conditional use permit as presented, with the following stipulations:*
 - 2.1) *In accordance with Sec. 10.814.90 of the Zoning Ordinance, the owner is required to obtain a certificate of use from the Planning Department verifying compliance with all standards of Sec. 10.814, including the owner-occupancy requirement and shall renew the certificate of use annually.*

I. PUBLIC HEARINGS – NEW BUSINESS (Cont.)

- C. The application of **Public Service Company of New Hampshire d/b/a Eversource Energy, Applicant** and the **City of Portsmouth and HCA Health Services of NH, Inc., Owners**, for properties located on **Borthwick Avenue** requesting a Wetland Conditional Use Permit under Section 10.1017 of the Zoning Ordinance for the replacement of three utility poles adjacent to Borthwick Avenue. The project proposes a temporary impact of 2,227 sq. ft. in the wetland area and 4,567 sq. ft. in the wetland buffer. Said properties are shown on Assessor Map 234 & 240 as Lots 7-3, 2-1001 & 2-1 and lie within the Natural Resource Protection (NRP) and Office Research (OR) Districts.



Description

Wetland Conditional Use approval is requested for the replacement of three utility poles adjacent to Borthwick Avenue. The project proposes temporary impact of 2,227 square feet in the wetland area and 4,567 square feet in the wetland buffer.

Conservation Commission Review

According to *Article 10 Section 10.1017.60* the applicant must satisfy the following conditions for approval of this project.

1. *The proposed construction is in the public interest.* The poles are in need of replacement and are necessary to support transmission lines that provide electric power to the region.

2. *Design, construction, and maintenance methods will utilize best management practices to minimize any detrimental impact of such use upon the wetland and will include restoration of the site as nearly as possible to its original grade, condition and vegetated state.* The project is utilizing wooden construction mats to support machinery, revegetating areas where vegetation is impacted, smoothing rutted areas, and contractors will be required to follow best management practices to control invasive species.
3. *No alternative feasible route exists which does not cross or alter a wetland or have a less detrimental impact on a wetland.* Given that this project is specifically designed to replace aging infrastructure this is the only alternative that works for this project.
4. *Alterations of natural vegetation or managed woodland will occur only to the extent necessary to achieve construction goals.* The project will have temporary impacts to the wetland and buffer but those impacts will be restored upon project completion.

The Conservation Commission reviewed this application at the June 12, 2019 meeting and voted unanimously to recommend approval as presented.

Planning Department Recommendation

Vote to grant the wetland conditional use permit as presented.

I. PUBLIC HEARINGS – NEW BUSINESS (Cont.)

- D. The application of **Annemarie D’Aversa, Owner** and **Tara Jenkins, Applicant** for property located at **123 Sparhawk Street** requesting a Wetland Conditional Use Permit under Section 10.1017 of the Zoning Ordinance to construct a 140 sq. ft. shed, level the rear yard and remove an existing rock wall all within the 100 foot tidal buffer zone. Said property is shown on Assessor Map 159 as Lot 4 and lies within the General Residence A (GRA) District.



Description

The application is requesting conditional use approval to construct a 140 square foot shed, level the back yard and remove an existing rock wall.

Conservation Commission Review

According to *Article 10 Section 10.1017.50* the applicant must satisfy the following conditions for approval of this project.

1. *The land is reasonably suited to the use activity or alteration.* The installation of the shed and regrading of the yard will have a temporary impact on the rear yard and will accommodate storage for the property owner. There is plantings proposed with this project which should offset any temporary impacts of the yard levelling. The new shed in the buffer is proposed with rain barrel collection system and stone bedding underneath which will allow for infiltration and reduce any impacts from the new impervious surface.
2. *There is no alternative location outside the wetland buffer that is feasible and reasonable for the proposed use, activity or alteration.* The applicant is proposing improvements to the rear yard of their property and as such does not have another location. Given nearly the entire lot is in the wetland buffer there is no other location here the shed can be located outside of the wetland buffer.
3. *There will be no adverse impact on the wetland functional values of the site or surrounding properties.* The project will result in some temporary impacts when the yard is being levelled but erosion control measures can reduce the impact from this work. The new shed is being installed with rainwater infiltration and collection so any impacts from the new impervious surface will be reduced.
4. *Alteration of the natural vegetative state or managed woodland will occur only to the extent necessary to achieve construction goals.* The proposed project will have a temporary impact on the lawn but a new lawn and proposed new vegetation should offset those impacts in the buffer.
5. *The proposal is the alternative with the least adverse impact to areas and environments under the jurisdiction of this section.* Overall the applicant has taken care to reduce impacts in the buffer with the pervious surface under the shed and new plantings. The design of this project is sensitive to the wetland buffer however it appears to lack any erosion control measures.
6. *Any area within the vegetated buffer strip will be returned to a natural state to the extent feasible.* The proposal includes new plantings in the wetland buffer.

The Conservation Commission reviewed this application at the June 12, 2019 meeting and voted unanimously to recommend approval with the following stipulations:

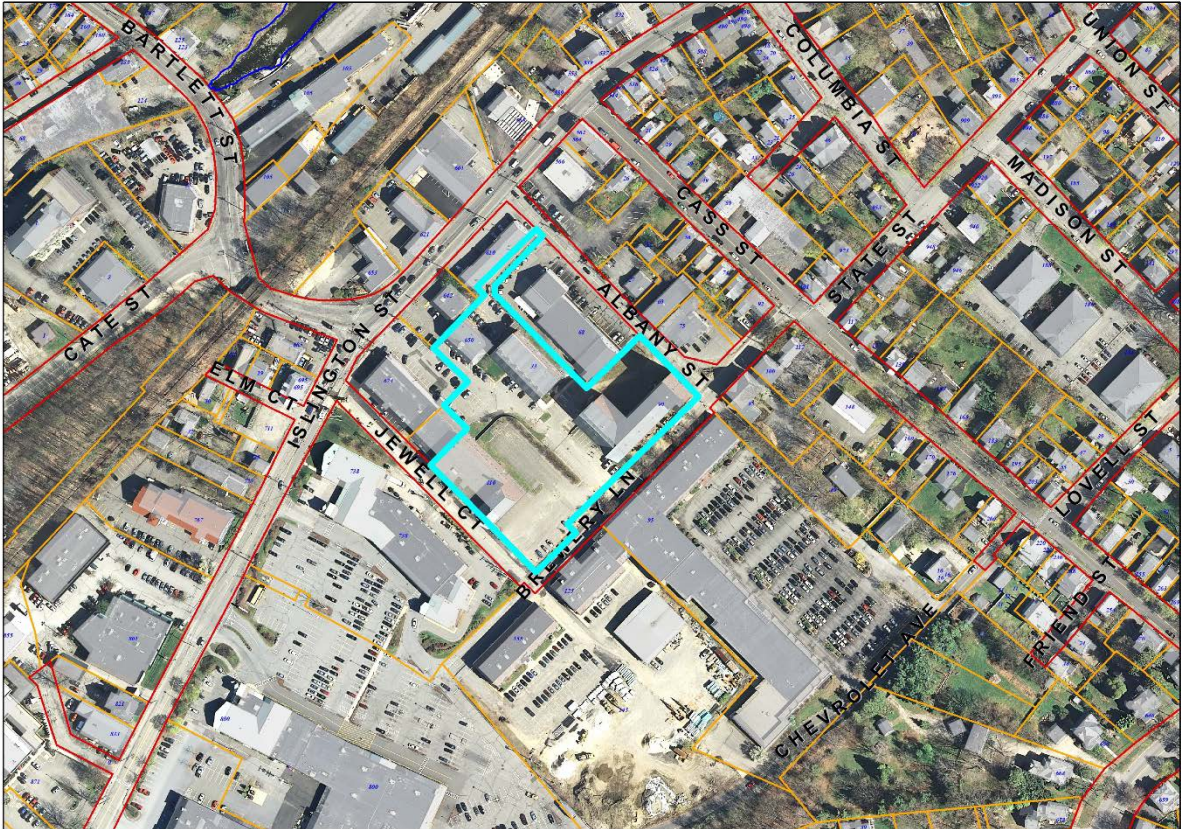
1. That the downslope edge of the yard have a silt sock installed to prevent siltation and erosion down the bank.
2. That the planting beds be mulched or covered around the new planting beds
3. That there be no more than six cubic yards of loam be brought in for fill to level they yard.

Planning Department Recommendation

1. *Vote to grant the wetland conditional use permit with the following stipulations:*
 - 1.1) *During construction, the downslope edge of the yard shall have a silt sock installed to prevent siltation and erosion down the bank.*
 - 1.2) *The planting beds shall be mulched or covered around the new planting beds.*
 - 1.3) *There shall be no more than six cubic yards of loam brought in for fill to level they yard.*

I. PUBLIC HEARINGS – NEW BUSINESS (Cont.)

- E. The application of **Chinburg Development, LLC, Owner, and Brendan Vesey, Applicant** for property located at **110 Brewery Lane** requesting a Conditional Use Permit in accordance with Sections 10.240 and 10.440 (#19.50) of the Zoning Ordinance to allow an Outdoor Dining or Drinking Area as an accessory use. Said property is shown on Assessor Map 155 as Lot 5 and lies within the Character District 4-W (CD4-W) District.



Description

The applicant requests a Conditional Use Permit for an outdoor drinking and dining area as an accessory use to its currently permitted principle use as a restaurant. This property is in Character District CD4-W where this accessory use requires a Conditional Use Permit from the Planning Board.

The applicant will need to apply for any applicable City Health Department permitting for operation of an outdoor dining area separately. Approval by the Planning Board of the Conditional Use Permit for the outdoor dining area would be for the use alone, any other land use or inspection approvals required would be subject to a separate permitting process.

Section 10.243 of the Zoning Ordinance outlines the general approval criteria that the Board must consider in the determination for granting a Conditional Use Permit for this accessory use.

Conditional Use Permit Criteria	Planning Department Comments
<p><i>10.243.21 - The design of proposed structures, their height and scale in relation to the site's surroundings, the nature and intensity of the proposed use or activity, and the layout and design of the site will be compatible with adjacent and nearby properties, buildings and uses, will complement or enhance the character of surrounding development, and will encourage the appropriate and orderly development and use of land and buildings in the surrounding area.</i></p>	<p>The applicant notes that the proposed seasonal structure is in relation to the site's surrounding area and general design matches the existing patios already in existence on the property.</p>
<p><i>10.243.22 - All necessary public and private utility infrastructure and services will be available and adequate to serve the proposed use.</i></p>	<p>The applicant notes that the same utilities and infrastructure that serve the restaurant's patrons inside are available to the small number of additional patrons on the proposed patio.</p>
<p><i>10.243.23 - The site and surrounding streets will have adequate vehicular and pedestrian infrastructure to serve the proposed use consistent with the City's Master Plan.</i></p>	<p>The applicant notes that the proposed patio preserves pedestrian thoroughfare with a 36" walkway remaining to the building tertiary entrance, with no vehicular impact.</p>
<p><i>10.243.24 - The proposed structures, uses, or activities will not have significant adverse impacts on abutting and surrounding properties on account of traffic, noise, odors, vibrations, dust, fumes, hours of operation, and exterior lighting and glare.</i></p>	<p>The applicant notes that the proposed patio will be lit by existing lighting and hours of operation will not exceed current approved patios on site. Number of guests will be small with a focus on dining rather than late night drinking.</p>
<p><i>10.243.25 - The proposed structures and uses will not have significant adverse impacts on natural or scenic resources surrounding the site, including wetlands, floodplains, and significant wildlife habitat.</i></p>	<p>The applicant notes this criteria is not applicable to this site.</p>
<p><i>10.243.26 - The proposed use will not cause or contribute to a significant decline in property values of adjacent properties.</i></p>	<p>There should be no significant impact on property values of adjacent properties.</p>

Conditional Use Permit Criteria	Planning Department Comments
<i>10.243.30 - Where specific standard or criteria are set forth in this Ordinance for the particular use permitted by conditional use permit, those standards and criteria shall apply in lieu of general standards in Section 10.243.20.</i>	There are no specific standards and criteria set forth in the Ordinance that would apply beyond the general criteria set forth by Section 10.243.20.

Per Section 10.244 of the Zoning Ordinance, the Planning Board may grant a conditional use permit subject to appropriate conditions of approval including but not limited to:

- Increased front, side, or rear yard / setback requirements
- Additional landscaping / screening
- Modifications to exterior features of buildings or structures
- Limitations on the size of buildings or structures
- Increased parking and loading requirements
- Modifications to number, size, lighting of signage
- Other performance standards related to the specific use

Planning Department Recommendation

- 1) *Vote to find that the proposal meets the conditional use permit criteria as listed in Section 10.243.20 of the Zoning Ordinance.*
- 2) *Vote to approve the conditional use permit as presented.*

II. OTHER BUSINESS

- A. The request of **Barbara R. Frankel** for property located at **89 Brewery Lane** for a 1-year extension of the Site Plan Review approval that was granted on July 19, 2018.

Description

The project received site plan review approval from the Planning Board on July 19, 2018 for the construction of a 2-story assisted living home, with a footprint of 3,146 s.f. and gross floor area of 9,438 s.f., with related paving, lighting, utilities, landscaping, drainage and associated site improvements.

Planning Department Recommendation

Vote to determine that no change has taken place that would materially affect the current site plan approval and approve a 1-year extension of the Site Plan Approval to expire on July 19, 2020.

II. OTHER BUSINESS (Cont.)

- B. The application of **Maud Hett Revocable Trust, Owner** and **MSC a division of TFMoran, Applicant** for property located on **Banfield Road** requesting Preliminary Conceptual Consultation for the construction of 22 new single family residential units and a new driveway as an Open Space Planned Unit Development in accordance with Section 10.725 of the Zoning Ordinance with related paving, utilities, landscaping, drainage and associated site improvements. Said property is located on Assessor Map 256 as Lot 2 and lies within the Single Residence A (SRA) District.



Description

As proposed, this project will require a Wetland Conditional Use Permit in addition to Planning Board Site Plan Review approval.

The City's Site Plan Review Regulations provide two options for "pre-application review" as authorized by RSA 676:4,II: "preliminary conceptual consultation" and "design review". The Site Plan Review Regulations require preliminary conceptual consultation for certain proposals, including (1) the construction of 30,000 sq. ft. or more gross floor area, (2) the creation of 20 or more dwelling units, or (3) the construction of more than one principal structure on a lot. Preliminary conceptual consultation precedes review by the Technical Advisory Committee.

Preliminary conceptual consultation is described in the statute as follows:

[Preliminary conceptual consultation ... shall be directed at review of the basic concept of the proposal and suggestions which might be of assistance in resolving problems with meeting requirements during final consideration. Such consultation shall not bind either the applicant or the board and statements made by planning board members shall not be the basis for disqualifying said members or invalidating any action taken. The board and the applicant may discuss proposals in conceptual form only and in general terms such as desirability of types of development and proposals under the master plan.]

The preliminary conceptual consultation phase provides the Planning Board with an opportunity to review the outlines of a proposed project before it gets to detailed design (and before the applicant refines the plan as a result of review by the Technical Advisory Committee and public comment at TAC hearings). In order to maximize the value of this phase, Board members are encouraged to engage in dialogue with the proponent to offer suggestions and to raise any concerns so that they may be addressed in a formal application.

Preliminary conceptual consultation does not involve a public hearing, and no vote is taken by the Board on the proposal at this stage.

II. OTHER BUSINESS (Cont.)

- C. The application of **Arbor View & The Pines, LLC, Owner** and **Altus Engineering, Inc., Applicant** for property located at **145 Lang Road** requesting Preliminary Conceptual Consultation to construct two (2) three-story, multi-family buildings with associated site improvements, grading, utilities, stormwater management and landscape improvements. Said property is shown on Assessor Map 287 as Lot 1 and lies within the Garden Apartment/Mobile Home Park (GAM/MH) District.



Description

As proposed, this project will require Planning Board Site Plan Review approval and a Wetland Conditional Use Permit.

II. OTHER BUSINESS (Cont.)

- D. The request of **Michael and Denise Todd** for property located at **254 South Street** for a 1-year extension of the Wetland Conditional Use Permit approval that was granted on August 23, 2018.

Description

The project received site plan review approval from the Planning Board on August 23, 2018 for work within the inland wetland buffer for the addition of a 157 s.f. deck and a 140 s.f. ground level patio in crushed stone or permeable pavers, and additional plantings on the east side to offset disturbance, with 297 + s.f. of impact to the wetland buffer.

Planning Department Recommendation

Vote to determine that no change has taken place that would materially affect the current site plan approval and approve a 1-year extension of the Site Plan Approval to expire on August 23, 2020.

II. OTHER BUSINESS (Cont.)

- E. The application of **4 Amigos, LLC, Owner** and **MHF Design Consultants, Inc., Applicant** for property located at **1400 Lafayette Road** requesting Preliminary Conceptual Consultation for a multi-unit Garden Style & Townhouse Style residential development with associated site improvements, parking, grading, utilities, stormwater management and landscaping. Said property is located on Assessor Map 252 as Lots 4, 5 & 9 and lies within the Gateway Neighborhood Mixed Use Center (G2) District.



Description

As proposed, this project will require Planning Board Site Plan Review approval and a Conditional Use Permit for a development site within the Gateway Neighborhood Mixed Use Center District (G2).

III. CITY COUNCIL REFERRALS

- A. Guiding Parking Principles discussion