



MEMORANDUM

To: Planning Board
From: Juliet T.H. Walker, Planning Director *JTW*
Jillian Harris, Planner 1
Subject: Staff Recommendations for the August 20, 2020 Planning Board Meeting
Date: 8/17/2020

II. DETERMINATIONS OF COMPLETENESS

SITE PLAN REVIEW

- A.** The application of the **Maud Hett Revocable Trust, Owner**, for property located on **Banfield Road** requesting Site Plan Review approval.
- B.** The application of **St. John's Church, Owner**, for property located at **105 Chapel Street** requesting Site Plan Review approval.
- C.** The application of **3201 Lafayette Road, LLC, Owner**, for property located at **0 Lafayette Road** requesting Site Plan Review approval.

Planning Department Recommendation

Vote to determine that the applications are complete according to the Site Plan Review Regulations contingent on the granting of any required waivers under Section III or IV of the agenda and to accept the applications for consideration.

SUBDIVISION REVIEW

- A.** The application of the **Judith Howard Revocable Trust and James & Laura LaJeunesse Family Trust, Owners**, for properties located at **80 Burkitt Street and 161 Thornton Street** requesting Preliminary and Final Subdivision (Lot Line Revision) Approval.
- B.** The application of the **Edward Mallon Revocable Trust and 56 Middle Street, LLC, Owners**, for properties located at **42 and 56 Middle Street** requesting Preliminary and Final Subdivision (Lot Line Revision) Approval.

Planning Department Recommendation

Vote to determine that the applications are complete according to the Subdivision Rules and Regulations and to accept the applications for consideration.

III. PUBLIC HEARINGS – OLD BUSINESS

It is recommended that Items III.A and III.B be discussed together and voted on separately.

A motion is required to consider these items together

- A.** The application of the **Maud Hett Revocable Trust, Owner**, for property located on **Banfield Road**, requesting a Wetland Conditional Use Permit under Section 10.1017 of the Zoning Ordinance to construct 22 single family homes and an access road with an impact of 4,013 s.f. of inland wetland area and 21,089 sq. ft. in the wetland buffer. Said property is located on Assessor Map 256 Lot 02 and lies within the Single Residence A (SRA) District.
- B.** The application of the **Maud Hett Revocable Trust, Owner**, for property located on **Banfield Road** requesting Conditional Use Permit approval for an Open Space Planned Unit Development according to the requirements of Section 10.725 of the Zoning Ordinance and Site Plan Review approval for the construction of 22 single-family homes and a new road with related parking, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 256 Lot 02 and lies within the Single Residence A (SRA) District.



Description

This is a project to construct 22 single family homes served by septic systems and a private road on an existing undeveloped forested parcel according to the requirements for an Open Space Planned Unit Development. The proposed private road accessing the development requires a wetland crossing and the entire project will result in additional permanent impacts to the wetland buffer.

Wetland Conditional Use Permit

On December 12, the applicant submitted a request to postpone their Planning Board hearing on the application. They also waived the time requirements stated in Section 10.1017.34 of the Zoning Ordinance to allow the Planning Board public hearing on the Wetland Conditional Use Permit to occur more than 90-days after the date of the initial submission. The applicant requested to postpone the application indefinitely at that time so the Site Plan and Subdivision applications for this project could be brought back to the Planning Board at the same time.

As is typical of a development of this type and in keeping with section 10.1017.33 of the Zoning Ordinance the City hired an independent wetland scientist (Michael Cuomo) to confirm the delineation done by the applicant for the site and an independent wetland/wildlife scientist (Mark West) to review impacts to wildlife from this site development. Both reports are attached here. Mark West has not provided an updated report since the modifications were made to the proposed development that addressed some of the issues he raised initially related to wildlife passages.

Any proposed development seeking a Wetland Conditional Use Permit must comply with the following criteria as outlined in Section 10.1017.50 of the Zoning Ordinance:

1. The land is reasonably suited to the use activity or alteration. This is a very challenging site to develop. Not only is the entire site surrounded by wetland areas, there are also ledge outcrops and steep slopes making road construction and site work difficult. While the applicant has made considerable progress with respect to confirming that the stormwater treatment and eco-passages will function properly, there are still significant wetland and wetland buffer impacts from this project and an associated loss of upland habitat. The applicant has taken measures to minimize the direct impacts to wetland areas, but more could be done to mitigate or offset these impacts such as measures for wetland buffer enhancement, expansion of existing wetland areas, control of site-wide invasive species and clearly defined meaningful long-term protection of the remaining open space areas.

2. There is no alternative location outside the wetland buffer that is feasible and reasonable for the proposed use, activity or alteration. In order to develop this parcel, the applicant has chosen the least impacting and most reasonable route for access to the upland areas on the site given the constraints of the site. Alternative routes to the site were explored and the wetland crossing proposed appears to have the least amount of direct impact to the wetland.

3. *There will be no adverse impact on the wetland functional values of the site or surrounding properties.* There will be direct impact to wetlands and loss of at least 2,963 square feet of wetland area. Experts consulted by the applicant state that the impacts from this project will be small compared to the overall size of the wetland resource on the site. Although some accommodations have been made for wildlife passage, the applicant should consider measures to offset or mitigate the adverse impacts to wetland areas.

4. *Alteration of the natural vegetative state or managed woodland will occur only to the extent necessary to achieve construction goals.* The applicant has made a concerted effort to minimize impacts in the wetland buffer and has proposed extensive landscaping on the site. However, the project involves a significant amount of tree removal as well as site grading to construct the 22 individual single family homes, roadway, driveways, and septic systems. A long-term conservation easement or deed restriction should be considered in order to ensure that the remaining forest and vegetation will remain undisturbed.

5. *The proposal is the alternative with the least adverse impact to areas and environments under the jurisdiction of this section.* The proposed location of the driveway has been designed to access the upland area with the least amount of direct wetland fill necessary to access the site. The roadway and stormwater treatment designs have been modified to minimize impacts on the wetland buffer areas. However, more could be done to mitigate or offset these impacts such as measures for wetland buffer enhancement, expansion of existing wetland areas, control of site-wide invasive species or clearly defined meaningful long-term protection of remaining open space areas.

6. *Any area within the vegetated buffer strip will be returned to a natural state to the extent feasible.* The entire site is undeveloped and there will be substantial changes due to the clearing of trees and grading that will be required to accommodate 22 housing lots on this site, therefore there is little to no opportunity to return any portion of the impacted wetland buffer to a natural state. However, additional efforts could be made to offset the impact of this project as stated above.

Conservation Commission Review

The Conservation Commission reviewed the wetland conditional use permit application at the December 11, 2019 meeting and voted 5-1-1 to recommend denial of this application as proposed, finding that the project as presented did not meet any of the criteria for approval of a wetland conditional use permit as listed in Section 10.1017.50 of the Zoning Ordinance. On July 16, 2020, at the request of the applicant, the Planning Board voted to refer this application back to the Conservation Commission and postpone the application to the August Planning Board meeting.

Since the initial Conservation Commission review, the applicant completed the septic system design for the project, revised the stormwater system design, and received approval from the Department of Environmental Services for the Alteration of Terrain permit and Wetland permit. In addition, the road design was been modified which resulted in a reduction the height of the proposed retaining wall and increase the height of the wildlife passages under the roadway. These revisions were undertaken to address many of the initial concerns raised by the Commission.

The Conservation Commission, at their August 12, 2020 meeting voted unanimously to approve the Wetland Conditional Use Permit Application with the following 7 stipulations:

- 1) Add speed signs and to post the site roadway at 15 mph;
- 2) Add animal crossing signs at crossing locations;
- 3) Provide details on plan showing planting of wetland seed mix in areas where site disturbance occurs within 25' of wetlands;
- 4) Provide information in condominium documents that restrict use of pesticides and fertilizers in buffer areas equal to or greater than as required in the City's Zoning Ordinance;
- 5) Add Conservation Easement to all the common open space currently shown on plan and expand that area to include all wetland and upland areas up to the wetland edge of the 100' buffer surrounding the limited common areas;
- 6) That there should be a connection in the condominium document that references the chloride reduction guidance stated in the maintenance guide.
- 7) Change the wording of removal of dead and diseased tree removal on open space only to the removal necessary to protect buildings and infrastructure.

These recommended stipulations have been incorporated into the Planning Department recommendation below, with one modification. For item number 1, the City's Transportation and Parking Engineer recommends that placing a regulatory speed limit sign on a private roadway does not really make sense and would require an ordinance change by City Council in order to be enforceable. Instead, staff is recommending placing a yellow advisory sign together with a WILDLIFE CROSSING sign.

Open Space Planned Unit Development Conditional Use Permit and Site Plan Review Approval

According to the Zoning Ordinance, the purpose of allowing open space planned unit developments is to permit a higher density clustering of residential units than a conventional subdivision in order to preserve natural features and create usable open space. The base residential density for an OSPUD is calculated in either one of the following ways:

- The number obtained by dividing the *developable area* of the parcel by the minimum lot area per dwelling unit required in the underlying zoning district.
- The number of lots that could be developed in a conventional subdivision of the lot.

The developable area excludes open water bodies, wetlands, floodplains, slopes exceeding 15 percent, and areas subject to existing valid open space restrictions.

In addition to allowing clustering of the residential units (rather than spreading out on individual conforming lots) an OSPUD has reduced requirements for interior building setbacks and allows for a variety of residential types (single family dwelling, two-family dwelling, townhouse, and multifamily dwelling).

An OSPUD must dedicate at least 25 percent of the total site area as permanently protected common open space according to the following guidelines/requirements:

- A portion of the minimum required open space must be developable area that is at least equal to the portion of the overall site that is developable. In order to comply with this requirement for this site, the applicant must include 6 acres of developable area in the permanently protected open space area.
- Preserved in perpetuity by restrictive covenant owned by either a private, non-profit corporation, association, or other non-profit legal entity (such as a condominium agreement or homeowners association), a public body (such as the City), a private non-profit organization (such as The Nature Conservancy).
- Linear open space that connects or contributes to other public or private open space is encouraged.
- Regulated public access to the common open space is encouraged.

The approval process for an OSPUD follows the procedures and standards for BOTH the City's Subdivision Rules and Regulations and Site Plan Review Regulations and therefore is subject to Technical Advisory Committee Review. In addition, the Conservation Commission shall be afforded an opportunity to comment on the particulars of a proposed PUD, including but not limited to the natural features of the parcel and how these may be impacted by the proposed project.

Prior to granting a conditional use permit for an OSPUD, the Planning Board must make the following findings:

- 1) The site is appropriate for an OSPUD.
- 2) The anticipated impacts of the proposed OSPUD on traffic, market values, stormwater runoff or environmental factors will not be more detrimental to the surrounding area than the impacts of conventional residential development of the site.

At its discretion, the Planning Board shall consider one of the following courses of action when considering a project submitted under the OSPUD requirements of the Ordinance:

- To grant a conditional use permit for the maximum number of allowable dwelling units authorized;
- To grant a conditional use permit for a number of dwelling units which is less than the maximum number authorized;
- To deny the conditional use permit.

Representations made at public hearings or in materials submitted to the Planning Board by an applicant for a conditional use permit for a PUD (including specifications for exterior building design and features; dwelling types, e.g., garden style, townhouse, free standing; dwelling unit sizes; number of buildings on lot; mix of market rate and affordable units; and parking) shall be deemed conditions and shall be documented in a development agreement entered into between the applicant and the City. Said development agreement must be reviewed and approved by the City Attorney prior to Planning Board approval of a conditional use permit. The applicant has submitted the draft development agreement to the City Attorney for review. Staff will advise the Planning Board on the status of that review at the meeting.

Conservation Commission Review

The Conservation Commission was provided an opportunity to comment on the OSPUD at the August 12, 2020 meeting. Although the Commission did not provide comments specifically on the OSPUD conditional use permit, they did discuss the overall impacts on natural features due to the proposed number of units and the challenges of developing a site that has a lot of ledge and will be entirely on private septic.

Technical Advisory Committee Review

During the TAC review for this project, a third party review was requested by City staff for the site drainage and the septic system design. The applicant and the City agreed to contract with CMA Engineers, Inc. for this review. The TAC reviewed the site plan application at the April 7, 2020 meeting and voted to recommend approval with the following stipulations:

Conditions of approval to be completed prior to submission to Planning Board:

- 1) Applicant shall overlay landscape plans with utility plans, check for conflicts and revise as necessary;
- 2) Applicant shall modify water main per the sketch provided by DPW separately;
- 3) Street name sign to be added to plan that is compliant with MUTCD and DPW standards;
- 4) Gas is shown on utility plan as deepest utility. Typical depth is 3'. Applicant to update plans as required by DPW;
- 5) Sheet C-34, Buried Gate Valve Detail shall be updated to show anchor tees with gate valves. Same detail, note 1 does not apply to this detail, note 2 is incorrect. Valve to open right;
- 6) Water Service Connection Detail says type K copper services, plan says CTS, please specify properly and update. If CTS, tracer wire will be required;
- 7) Add note to hydrant, 'hydrant to open right';
- 8) Specify NH standard frame and grate for catch basins;
- 9) Water main shall be DI, PVC shown on detail is not approved and shall be updated;
- 10) Gravel selects should extend at least 24" past EOP because road is so narrow;
- 11) Details for retaining walls along the roadway need to be designed and stamped by PE and submitted for review;
- 12) Applicant shall add a note to the Lighting Plan that roadway lighting shall be dark sky friendly and lighting details shall be updated accordingly;
- 13) Stormwater maintenance plan and cleaning report need to be submitted yearly to the DPW and Planning Department. Applicant shall include a note on the plan for this requirement;
- 14) Extent of guardrail to be used shall be shown clearly and plans shall call out where guardrail locations are required. Plans shall specify requirements per AASHTO;
- 15) Move the stop sign and stop bar to 10 feet from the edge of Banfield Road;
- 16) There appears to be a tree in the path of the fire truck turning path at the intersection with the first internal cross street. The landscape plans and the fire truck turning path plans should be overlaid to determine if there are any other locations where conflicts may occur;
- 17) See separate comments provided by peer reviewer (CMA) for drainage system. Final sign off from peer review is required for the drainage system design;
- 18) Sewer design plan shall be submitted and shall include percolation test data as required by TAC. Third party review and approval is required for the design prior to submission to Planning Board;

- 19) Applicant shall provide documentation that an analysis of the habitat crossings proposed are the preferred design versus a bridge crossing as previously discussed with TAC;
- 20) Applicant shall update plans to fully align the two common access driveways at the front end of the development.

Conditions to be included in Planning Board approval:

- 21) Utilities and storm drainage to be overseen by third party during construction;
- 22) Hydrant maintenance plan shall be provided;
- 23) ECO Passage Grates to be reviewed every 5 years for compliance with H2O loading by NH PE, report to be submitted to DPW. Applicant shall submit Condominium documents that outline this requirement subject to final review and approval by DPW, Planning, and Legal Departments.

On June 24, 2020 the applicant submitted revised plans addressing stipulations 1-20 to the satisfaction of the Planning Department and DPW. The third party review was also completed by CMA. The remaining conditions have been added below and an additional stipulation has been added related to requirements for compliance with licensing for utilities in the ROW at the request of DPW.

Waiver Requests

The applicant has requested waivers to the subdivision and site plan review requirements for this project. Per Section 10.724.40 of the Zoning Ordinance, if the Planning Board grants waivers to street design standards or utility standards, the conditional use permit shall include a condition prohibiting a future petition for acceptance as a public street.

- 1) Subdivision Regulations -- Section VI(3)(I) Cul-de-Sacs: "The maximum length of a cul-de-sac shall generally be five hundred (500) feet unless otherwise approved by the Board."

The proposed cul-de-sac is located 900' from the street. The applicant has made a case that creating a second accessway to the site to create a through-road would have additional impacts to wetland areas. Each house will have a sprinkler system installed. Additionally, fire hydrants are proposed in two locations along the proposed road to aid in fire suppression.

- 2) Subdivision Regulations – Section VI(3)(B) Street Rights of Way and Residential Street Minimum Standards: The required minimum right-of-way is 50' and the required pavement width is 32'.

The proposed pavement width is 20'. The applicant has referenced the guidelines provided in the "City of Portsmouth Complete Street Design Guidelines," which recommend a pavement width of 20' for a *neighborhood slow street*.

Planning Department Comments

As explained above, in order to grant the OSPUD CUP, the Planning Board must find that the impacts of the proposed OSPUD on traffic, market values, stormwater runoff or environmental factors will not be more detrimental than the impacts of a conventional residential development of the site. One of the ways to determine this is to do a

comparative analysis of the proposed project with a conventional residential development of the site (which in this case would be a conventional subdivision meeting the dimensional requirements of the Single Residence A district). Although staff have requested that such a comparison would be useful for the Board's consideration, the applicant has not provided a conventional subdivision layout for the site.

While the applicant could reasonably make a case that project impacts to traffic and market values would not be more detrimental than a conventional development of the site, it is hard to assess how stormwater runoff and environmental factors (such as wildlife habitat and tree loss) would compare to a conventional development without a more detailed analysis of both options. The burden for making that case is on the applicant.

The applicant has worked to minimize the impacts of the project on the wetland buffer area by implementing a stormwater treatment system that the third party review concurred would manage groundwater and provide the intended stormwater flow attenuation and water quality treatment. However, in order to stay out of the wetland buffer and still maintain the 22 single family homes, the subsurface stormwater system that is proposed will be more difficult to monitor for maintenance issues and failures and any repairs will be difficult particularly because they are partially under the subdivision access road. In contrast, a more conventional surface water quality treatment, such as gravel wetlands, bioretention area or similar, would be easier to construct and maintain. In order to construct a surface treatment system that is not located at least one of the proposed residential units would likely need to be removed.

During the TAC process, staff recommended that the applicant consider options to reduce the overall footprint of the project by exploring townhomes or multi-family dwellings which are allowed in a PUD or by simply reducing the number of units. The applicant's attorney has argued that the Zoning Ordinance does not allow townhouses or multi-family residences, but Planning Department staff continues to affirm that such uses are allowed. Even if the applicant is unwilling to consider alternatives to single family residences, a reduction in the number of units could be considered.

If the Planning Board is not convinced that the proposed OSPUD will not be more detrimental than a conventional residential development, the Board has the option to either deny the application all together or to grant approval for a number of dwelling units which is less than the maximum allowed.

While the common open space provided by the applicant meets the minimum area required by the ordinance, the applicant does not clearly demonstrate how the open space supports the goals of Section 10.721.11 of the Zoning Ordinance to preserve natural features and create usable open space. The Zoning Ordinance provides guidance in Section 10.725.40 that the common open space should connect or contribute to other public or private open space and should provide regulated public access. In addition to protecting the common open space through a conservation easement and expanding the easement to include the wetland areas (as recommended by the Conservation Commission), provision for limited public access and/or connections to neighboring open spaces should be considered.

Planning Department Recommendation

Wetland Conditional Use Permit

- 1) *Vote to grant the Wetland Conditional Use Permit application with the following stipulations:*
 - 1.1) *Add yellow advisory sign of 15 mph along at the wildlife crossing location;*
 - 1.2) *Add WILDLIFE CROSSING signs at crossing locations;*
 - 1.3) *Provide details on plan showing planting of wetland seed mix in areas where site disturbance occurs within 25' of wetlands;*
 - 1.4) *Provide information in condominium documents that restrict use of pesticides and fertilizers in buffer areas equal to or greater than as required in the City's Zoning Ordinance;*
 - 1.5) *Provide a Conservation Easement that includes all the common open space and expands the protected area to including all wetland and upland areas up to the wetland edge of the 100' buffer surrounding the limited common areas. Such easement deed shall be reviewed and approved by the Planning and Legal Departments prior to recording;*
 - 1.6) *That there should be a connection in the condominium document that references the chloride reduction guidance stated in the maintenance guide;*
 - 1.7) *Change the wording of removal of dead and diseased tree removal on open space only to the removal necessary to protect buildings and infrastructure.*

Conditional Use Permit and Site Plan Review Approval – OSPUD

- 2) *If the Planning Board determines that the applicant has made the case that the proposed OSPUD will not be more detrimental than a conventional subdivision, the Planning Board should vote to find that:*
 - 2.1) *The site is appropriate for an OSPUD, and;*
 - 2.2) *The anticipated impacts of the proposed OSPUD on traffic, market values, stormwater runoff or environmental factors will not be more detrimental to the surrounding area than the impacts of conventional residential development of the site.*
- 3) *Vote to grant a waiver to the Subdivision Regulations -- Section VI(3)(I) Cul-de-Sacs to allow a 900-foot cul-de-sac length where 500 feet is the maximum allowed by finding that either [NOTE: Motion maker must select one of the following options]:*
 - a) *Strict conformity would pose an unnecessary hardship to the applicant and waiver would not be contrary to the spirit and intent of the regulations*

[OR]

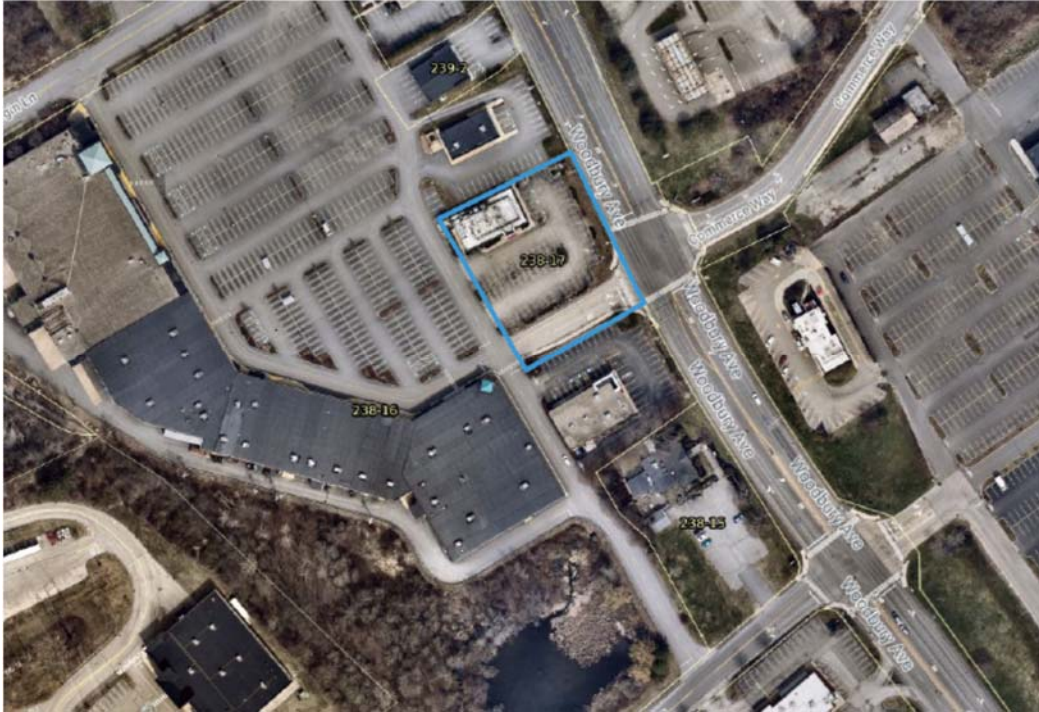
 - b) *Specific circumstances relative to the subdivision, or conditions of the land in such subdivision, indicate that the waiver will properly carry out the spirit and intent of the regulations*

- 4) *Vote to grant a waiver to the Subdivision Regulations -- Section VI(3)(B) Street Rights of Way and Residential Street Minimum Standards to allow 20' of pavement width where 32' is the minimum allowed by finding that either [NOTE: Motion maker must select one of the following options]:*
- a) *Strict conformity would pose an unnecessary hardship to the applicant and waiver would not be contrary to the spirit and intent of the regulations*
- [OR]*
- b) *Specific circumstances relative to the subdivision, or conditions of the land in such subdivision, indicate that the waiver will properly carry out the spirit and intent of the regulations*
- 5) *Vote EITHER to grant the conditional use permit and site plan review approval for the maximum number of allowed dwelling units authorized OR grant the conditional use permit and site plan review for a number of dwelling units which is less than the maximum number authorized, with the following stipulations [in addition to any stipulations added by the Planning Board as part of their deliberations]:*
- 5.1) *The site plan and any easement plans and deeds shall be recorded at the Registry of Deeds by the City or as deemed appropriate by the Planning Department;*
- 5.2) *Utilities and storm drainage shall be overseen by third party during construction;*
- 5.3) *The Engineer of Record shall submit a written report (with photographs and engineer stamp) certifying that the stormwater infrastructure was constructed to the approved plans and specifications and will meet the design performance;*
- 5.4) *A stormwater inspection and maintenance report shall be completed annually and copies shall be submitted to the City's Planning and Public Works Departments;*
- 5.5) *A hydrant maintenance plan shall be provided prior to issuance of a building permit;*
- 5.6) *ECO Passage Grates shall be reviewed every 5 years for compliance with H2O loading by NH PE and such report shall be submitted to the City of Portsmouth Planning Department and DPW. Applicant shall submit condominium documents that outline this requirement subject to final review and approval by DPW, Planning, and Legal Departments;*
- 5.7) *Street name sign proof shall be reviewed and approved by DPW prior to fabrication and installation;*
- 5.8) *A license for locating the proposed utility pole in the Banfield Road right-of-way shall be reviewed and approved by the Legal Department and DPW and accepted by the City Council;*
- 5.9) *The granting of the waiver for the cul-de-sac length shall prohibit a future petition for acceptance of the private road as a public street;*
- 5.10) *Owner shall provide an access easement to the City for water valve access and leak detection;*
- 5.11) *Prior to the issuance of a building permit, any easement plans and deeds for which the City is a grantor or grantee shall be reviewed and approved by the Planning and Legal Departments prior to acceptance by City Council;*

5.12) Prior to issuance of a building permit, the applicant shall enter into a development agreement with the City per the requirements of the Zoning Ordinance and subject to review and approval by the Legal Department.

III. PUBLIC HEARINGS – OLD BUSINESS (Cont.)

- C. The application of **Richard Fusegni, Owner**, for property located at **1574 Woodbury Avenue** requesting a Conditional Use Permit for a drive-through facility in accordance with Section 10.440 (19.40) of the Zoning Ordinance and Site Plan Review Approval for the construction of a new retail bank with parking, utilities, landscaping, lighting, drainage and associated site improvements. Said property is shown on Assessor Map 238 Lot 17 and lies within the Gateway Neighborhood Mixed Use Corridor (G1) District.



Description

The applicant proposes to demolish the existing restaurant on-site and construct a new retail bank facility with drive-through ATM.

Technical Advisory Committee Review

The TAC reviewed the site plan application at the August 4, 2020 meeting and voted to recommend approval with the following stipulations:

1. Move notes 1-3 on Cover Sheet to sheet C-2;
2. Move notes 4-6 on Cover Sheet to LP-1;
3. Address the requirements stated in section 10.835.40 of the Zoning Ordinance related to traffic capacity and safety for Planning Board approval of the conditional use permit;
4. Submit a waiver request related to the Drive-Through Facilities requirements for the Site Plan review regulations require that a Traffic Impact Study must be completed (see Section 3.6.3);
5. Submit a waiver request for the requirement that stacking lanes and spaces be provided as required by Section 3.6.2 of the Site Plan Review regulations;
6. On Sheet C-2, add a note that a separate sign permit will be required for any proposed signage listed in the "Signage Table";

7. Provide a detail of the dumpster screening consistent with the requirements of Section 10.1132 of the Zoning Ordinance;
8. Adjust the proposed dumpster location to be a minimum 20' from the abutting lot line per the Site Plan Review regulations or submit a waiver request for consideration by the Planning Board;
9. Provide the dimensions of the proposed bike rack pad and distance from the building;
10. Modify bike rack detail on CD-1 for to be consistent with the City's preferred standard;
11. Remove penalty sign under the handicap parking sign(s);
12. Directional signs at driveways should be placed no closer than 15 feet to plaza drive aisle, to avoid blocking sight lines for drivers exiting bank driveways into plaza drive aisle;
13. Proposed CDS Stormwater Unit needs to be a separate stand-alone unit that is not located over the existing drainage pipe;
14. Provide site specific details in the plan set (Sheet CD-2) for the CDS unit including site specific data requirements, model number, dimensions. Note should be added to the plans indicating the responsible party for maintenance and maintenance requirements;
15. Indicate where the "doghouse manhole" is intended to be located;
16. Indicate where "pipe connection to existing manhole detail" shown on Sheet CD-2 is proposed;
17. Building sewer lateral should be 6 inch diameter pipe;
18. Review proposed building sewer lateral with DPW to confirm if it could be installed with fewer cleanouts.

On August 12, 2020 the applicant submitted revised plans addressing the stipulations above. DPW is still completing their compliance review of these changes, and staff memo will be updated as needed before the meeting to report back on any outstanding items. As recommended by the City's arborist the tree planting detail should be the City's standard and this has been added to the recommended stipulations of approval below.

Waivers

The applicant is seeking waivers from the following Site Plan Review Regulations:

- 1) Section 3.6.3 – requiring that a Traffic Impact Study be provided for a Drive Through use

The City's Transportation and Parking Engineer agreed with the applicant that a traffic generation memorandum is sufficient for this proposed use in this location.

- 2) Section 9.3.5 -- requiring that a dumpster be located 20 feet from a property line

The dumpster location is located the minimum distance from the property line that is required by the zoning ordinance and will be screened appropriately. As it is located next to another commercial property, the requirement to be 20 feet away seems unreasonable.

Planning Department Recommendation

1) *Vote to find that the granting of the waivers will not have the effect of nullifying the spirit and intent of the City's Master Plan or the Site Plan Review Regulations, and to waive the following regulations:*

a) Section 3.6.3 – requiring a Traffic Impact Study to be submitted for an application containing a drive-through facility;

b) Section 9.3.5 – requiring dumpsters or other waste container pads to be a minimum of 20 feet from any property line or yard.

[Note: An affirmative vote of six members of the Planning Board is required to grant a waiver to the Site Plan Review regulations.]

2) *Vote to grant Site Plan Review Approval with the following stipulations:*

2.1) The site plan shall be recorded at the Rockingham County Registry of Deeds or as deemed appropriate by the Planning Department.

2.2) Tree Planting detail and notes on Sheet LP-2 shall be updated to reflect the City's Standard Tree Planting detail.

IV. PUBLIC HEARINGS – NEW BUSINESS

- A. The application of **St. John’s Church, Owner**, for property located at **105 Chapel Street** requesting Site Plan Review approval for the construction of a 1,043 +/- s.f. building addition with associated site improvements. Said property is shown on Assessor Map 106 Lot 62 and lies within the Civic District.



Description

The applicant proposes an addition to the entryway of the Church to accommodate ADA accessibility. The Historic District Commission granted approval with stipulations for this application at their July 8, 2020 meeting.

Technical Advisory Committee Review

The TAC reviewed the site plan application at the July 7, 2020 meeting and voted to recommend approval with the following stipulations:

- 1) Drains and sewer gas trap design subject to DPW review and approval.
- 2) Reconstructed tip down in sidewalk should have tactile pad added.

On July 17, 2020 the applicant submitted revised plans addressing stipulations 1-2 above to the satisfaction of the Planning Department and DPW.

Waivers

Due to the modest size of this expansion, the applicant is seeking waivers to submission of the following required plans and standards of the Site Plan Review Regulations:

- 1) Section 6.2 – Landscaping Plan
- 2) Section 10.3 – Lighting Plan
- 3) Section 7.4.2.8 – Stormwater Management

Planning Department Recommendation

1) *Vote to find that the granting of waivers will not have the effect of nullifying the spirit and intent of the City's Master Plan or the Site Plan Review Regulations, and to waive the following regulations:*

1a) Section 6.2 – requiring a Landscaping Plan to be submitted.

1b) Section 10.3 – requiring a Lighting Plan.

1c) Section 7.4.2.8 – requiring measures to control the post-development peak rate of runoff so that it does not exceed pre-development runoff.

[Note: An affirmative vote of six members of the Planning Board is required to grant a waiver to the Site Plan Review regulations.]

2) *Vote to grant Site Plan Review Approval with the following stipulations:*

2.2) The site plan shall be recorded at the Rockingham County Registry of Deeds or as deemed appropriate by the Planning Department.

IV. PUBLIC HEARINGS – NEW BUSINESS (Cont.)

- B.** The application of the **Judith Howard Revocable Trust and James & Laura LaJeunesse Family Trust, Owners**, for properties located at **80 Burkitt Street and 161 Thornton Street** requesting Preliminary and Final Subdivision (Lot Line Revision) Approval for 2 lots as follows: Lot 34 on Assessor Map 159 decreasing in area from 8,232 s.f. to 8,102 s.f. and Lot 33 on Assessor Map 159 increasing in area from 6,011 s.f. to 6,141 s.f. Said properties are shown on Assessor Map 159 Lots 33 & 34 and lie within the General Residence A (GRA) District.



Description

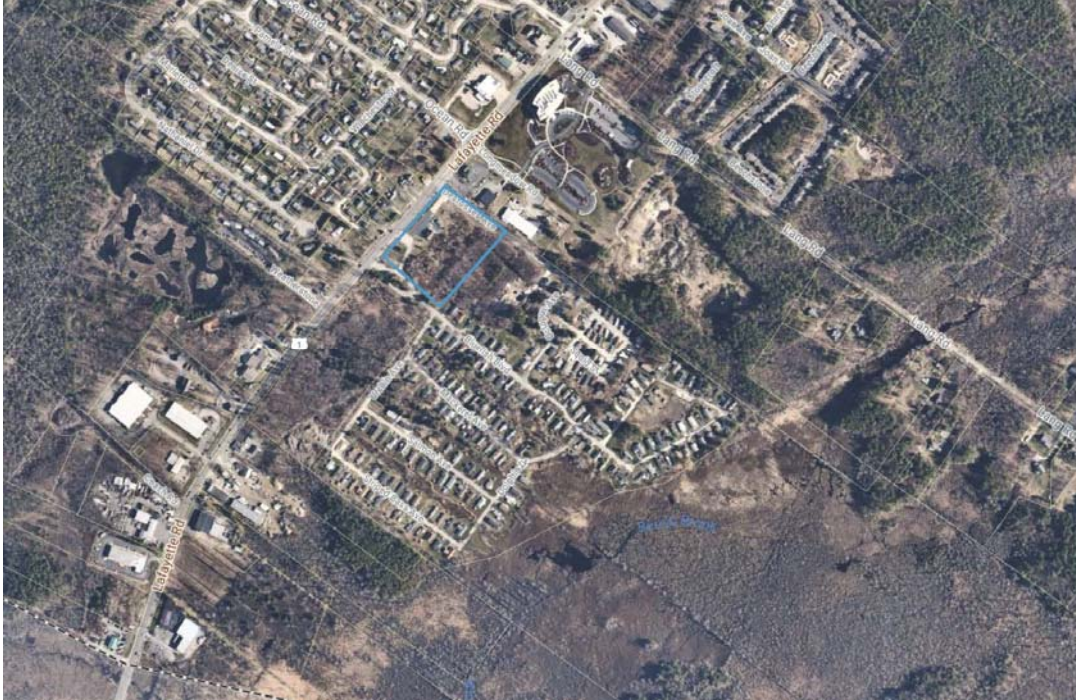
The applicants are requesting a minor lot line revision to address driveway and rear yard accessibility for 80 Burkitt St., ultimately making the lot less non-conforming in terms of lot area and right yard side setback.

Planning Department Recommendation

- 1) *Vote to grant Preliminary and Final Subdivision (Lot Line Revision) Approval with the following stipulations:*
 - 1.1) *Property monuments shall be set as required by the Department of Public Works prior to the filing of the plat.*
 - 1.2) *GIS data shall be provided to the Department of Public Works in the form as required by the City.*
 - 1.3) *The final plat(s) shall be recorded at the Registry of deeds by the City or as deemed appropriate by the Planning Department.*

IV. PUBLIC HEARINGS – NEW BUSINESS (Cont.)

- C. The application of **3201 Lafayette Road, LLC, Owner**, for property located at **0 Lafayette Road** requesting Site Plan Review approval to add 6 manufactured homes for display, 1 temporary manufactured home with office space and utility connections and boat or trailer storage with associated site improvements. Said property is shown on Assessor Map 291 Lot 8 and lies within the Gateway Neighborhood Mixed Use Corridor (G1) District.



Description

The applicant proposes to add 6 manufactured homes for display and 1 temporary office unit with associated utility connections, parking, landscaping and boat or trailer storage. The Zoning Board of Adjustment granted a Special Exception for the use at their May 19, 2020 meeting.

Technical Advisory Committee Review

The TAC reviewed the site plan application at the August 4, 2020 meeting and voted to recommend approval as presented.

Waivers

The applicant is seeking waivers from submitting information on the following as required by the City's Site Plan Review Regulations:

- 1) Section 2.5.4.3(j) – type and placement of outdoor lighting fixtures.
- 2) Section 2.5.4.3(b) – Elevations of buildings.

Planning Department Recommendation

1) *Vote to find that a waiver will not have the effect of nullifying the spirit and intent of the City's Master Plan or the Site Plan Review Regulations, and to waive the following required submissions:*

- a) *Section 2.5.4.3(j) – type and placement of outdoor lighting fixtures.*
- b) *Section 2.5.4.3(b) – Elevations of buildings.*

[Note: An affirmative vote of six members of the Planning Board is required to grant a waiver.]

2) *Vote to grant Site Plan Review Approval with the following stipulations:*
2.1) *The site plan shall be recorded at the Rockingham County Registry of Deeds or as deemed appropriate by the Planning Department.*

IV. PUBLIC HEARINGS – NEW BUSINESS (Cont.)

- D. The application of **C & P Gallagher Properties, LLC, Owner**, for property located at **801 Islington Street** 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 and Drinking Area as an accessory use. Said property is shown on Assessor Map 165 Lot 8 and lies within the Character District 4-W (CD4-W) District.



Description

The applicant requests a Conditional Use Permit for a permanent outdoor drinking and dining area as an accessory use to its currently permitted principle use as an eating/drinking establishment. 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.

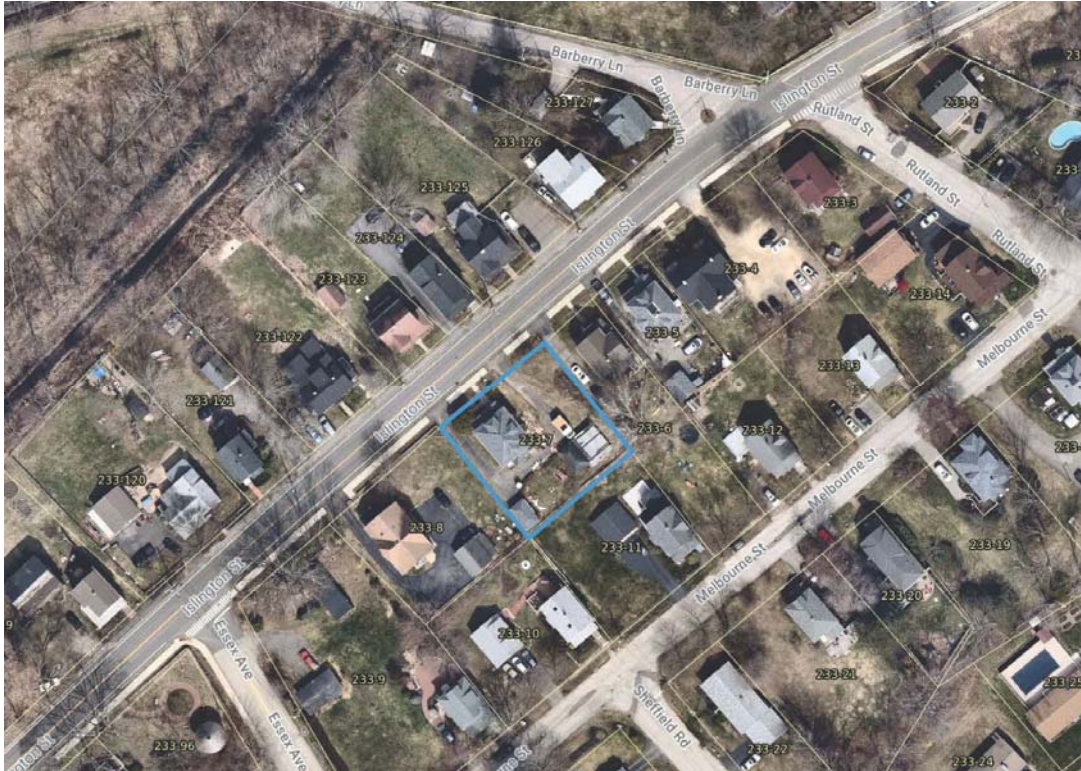
Conditional Use Permit Criteria	Planning Department Comments
<p><i>10.243.21 - The design of proposed structures, their height and scale in relation to the site's surroundings, the nature and intensity of the proposed use or activity, and the layout and design of the site will be compatible with adjacent 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 the design of the proposed structure is a 1,100' patio utilizing permeable pavers, for the purpose of seasonal outdoor dining. The City has recently constructed new sidewalks, and this will be compatible with those, and enhance surrounding properties.</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 this criteria will be met.</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 there is adequate vehicular and pedestrian infrastructure to serve the proposed use, consistent with the City's Master Plan. A crosswalk is in close proximity to the proposed patio.</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 structure and use will have no significant adverse impact on abutting and surrounding properties.</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 that the proposed structure and use will not have adverse impact on natural or scenic resources surrounding the site. There are no wetlands, floodplains, or significant wildlife habitat in the vicinity.</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>The proposed use will not cause or contribute to a decline in 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.

<u>Planning Department Recommendation</u>
<p>1) <i>Vote to find that the proposal meets the conditional use permit criteria as listed in Section 10.243.20 of the Zoning Ordinance.</i></p> <p>2) <i>Vote to approve the conditional use permit as presented.</i></p>

IV. PUBLIC HEARINGS – NEW BUSINESS (Cont.)

- F. Public Hearing on Council Referral for a report back on a request from **Jeremy Conte, Owner** for the restoration of involuntarily merged lots at **1240 Islington Street** to their pre-merger status pursuant to NH RSA 674:39-aa.



Description

At its meeting on June 15, 2020, the City Council considered a request from Jeremy Conte, requesting the restoration of involuntarily merged lots at 1240 Islington Street to their pre-merger status pursuant to NH RSA 674:39-aa.

At the June 15, 2020 meeting, the Council voted to refer this request to the Assessing Department and the Department's report back in included in the packet. At the July 15th Council meeting, the Council initially voted to refer this item to the Planning Board, but then later voted to reconsider that vote at the August 3rd meeting. At the August 3rd meeting, the Council did not consider this item before they voted to continue the meeting to August 18th. If anything changes as a result of the August 18th Council meeting, an update will be provided to the Planning Board.

Statutory Requirements

RSA 674:39-aa requires the City Council to vote to restore "to their premerger status" any lots or parcels that were "involuntarily merged" by municipal action for zoning, assessing, or taxation purposes without the consent of the owner. Unlike all other lot divisions, there is no statutory role for the Planning Board in this process nor is there any requirement for the City to hold a public hearing. However, in Portsmouth the City

Council has historically referred such requests to the Planning Board to conduct a public hearing.

The statute defines “voluntary merger” and “voluntarily merged” to include “any overt action or conduct that indicates an owner regarded said lots as merged such as, but not limited to, abandoning a lot line” (RSA 674:39-aa, I). It is therefore the City Council’s responsibility to determine whether a merger was voluntary (i.e., requested by a lot owner) or involuntary (implemented by the City without the owner’s consent). If the merger was involuntary, the Council must vote to restore the lots to their premerger status. Following such a vote, the City GIS and Assessing staff will update zoning and tax maps accordingly. It will then be up to the owner to take any further action to confirm the restoration to premerger status, such as recording a plan at the Registry of Deeds.

It is important to note that the granting of a request to restore lots to their premerger status does not mean that the resulting lots will be buildable or, if already developed, will conform to zoning. The statute states that “*The restoration of the lots to their premerger status shall not be deemed to cure any non-conformity with existing land use ordinances*” (RSA 674:39-aa, V). For example, the restored lots may not comply with current zoning requirements for lot area, frontage and depth, and the re-establishment of a lot line between any two premerger lots may introduce a new nonconformity with respect to maximum allowed building coverage or a minimum required side yard where a building already exists on one of the premerger lots. In such cases, the owner(s) of the applicable lot(s) would have to apply to the Zoning Board of Adjustment for the necessary variances to restore zoning compliance or to allow future development.

Planning Department Recommendation

- 1) *Vote to recommend that the lots be unmerged as requested by the owner.*

V. PEASE DEVELOPMENT AUTHORITY

- A. The request of the **Pease Development Authority, Owner and the State of New Hampshire Department of Transportation, Applicant**, for property located at **185 Grafton Road** requesting a recommendation for Subdivision approval under Chapter 500 of the Pease Development Authority Subdivision Regulations, per part 503.01(c), for a lease acquisition area of 14.04 acres at the Portsmouth Transportation Center. Said property is shown on Assessor Map 300 Lot 1 and lies within the Natural Resource Protection (NRP) District.



Description

The NHDOT has been occupying the Portsmouth Transportation Center (PTC) premises pursuant to 5-year renewable Rights-of-Entry. Prior to entering into an agreement with a private party to undertake the potential development and long-term maintenance and operation of the bus terminal at PTC, DOT wishes to acquire a more permanent interest in the property. The applicant is proposing a long-term lease agreement with PDA, including the recording of a subdivision plan.

The PDA Subdivision Regulations typically require a public hearing on an application. However, Part 503.01(c) exempts any department or agency of the State of New Hampshire from the public hearing provision.

The 185 Grafton parcel is situated in both the Natural Resource Protection and Airport Zones and therefore, PDA is recommending to DOT that the application first go to the Portsmouth Planning Board and then the PDA Board.

Planning Department Recommendation

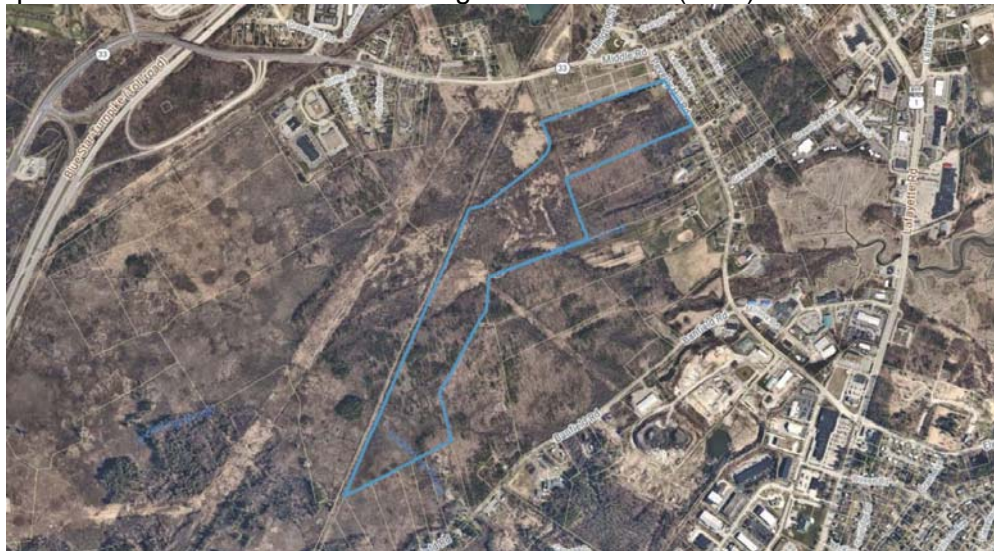
Vote to recommend Subdivision approval under Chapter 500 of the Pease Development Authority Subdivision Regulations, per part 503.01(c), for a lease acquisition area of 14.04 acres at the Portsmouth Transportation Center.

VI. PRELIMINARY CONCEPTUAL CONSULTATION

- A.** The request of **238 Deer Street, LLC, Owner**, for property located at **238 Deer Street** for Preliminary Conceptual Consultation for the construction of a 3-4 story mixed-use building with ground floor retail and 21 micro-apartments. Said property is shown on Assessor Map 125 Lot 3 and lies within the Character District 4 (CD4) District. No public hearing or abutters.



- B.** The request of the **SB & NA Stokel Trust and Philip Stokel, Owners**, for property located at **83 Peverly Hill Road** for Preliminary Conceptual Consultation for a 60-unit Open Space Planned Unit Development (OSPUD). Said property is shown on Assessor Map 242 Lot 4 and lies within the Single Residence A (SRA) District.



Description

As authorized by NH RSA 676:4,II, 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 state 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. Unlike Design Review, completion of Preliminary Conceptual Consultation does not vest the project to the current zoning.

VII. OTHER BUSINESS

A. Proposed Revisions to the City of Portsmouth Site Plan Review Regulations.

Description

A draft of proposed revisions to the Site Plan Review regulations is included in the Planning Board's packet for information purposes. No action by the Board is recommended at this meeting, but staff would like to discuss the timeline for the proposed revisions.

B. The request of **Arbor View and The Pines, LLC, Owners** for property located at **145 Lang Road** for a 1-year extension of Site Plan Review approval to construct two (2) three-story, multi-family buildings with associated site improvements, grading, utilities, stormwater management and landscape improvements that was granted on August 15, 2019.

Description

The project received Site Plan Review Approval from the Planning Board on August 15, 2019 for the construction of two (2) three-story, multi-family buildings with associated site improvements, grading, utilities, stormwater management and landscape improvements.

Planning Department Recommendation

Vote to approve a 1-year extension of the Site Plan Approval to expire on August 15, 2021.

C. The request of **Arbor View and The Pines, LLC, Owners** for property located at **145 Lang Road** for a 1-year extension of the Conditional Use Permit in accordance with Section 10.1112.14 of the Zoning Ordinance for provision of 367 parking spaces where a maximum of 336 are allowed by Section 10.1112.51 of the Zoning Ordinance that was granted on August 15, 2019

Description

The project received a conditional use permit approval from the Planning Board on August 15, 2019 for provision of 367 parking spaces where a maximum of 336 are allowed by Section 10.1112.51 of the Zoning Ordinance.

Planning Department Recommendation

Vote to approve a 1-year extension of the Conditional Use Permit Approval to expire on August 15, 2021.

- D. The request of **HCA Health Services of New Hampshire, Inc., dba Portsmouth Regional Hospital. Owner**, for property located at **333 Borthwick Avenue**, for a 1-year extension of a Wetland Conditional Use Permit for a two-story building addition with a footprint of 1,220 square feet in the area of the former mobile-MRI unit. The applicant proposes a permanent disturbance of 2,954 square feet and temporary disturbance of 1,610 square feet all within the 100' inland wetland buffer. This was originally granted on November 21, 2019.

Description

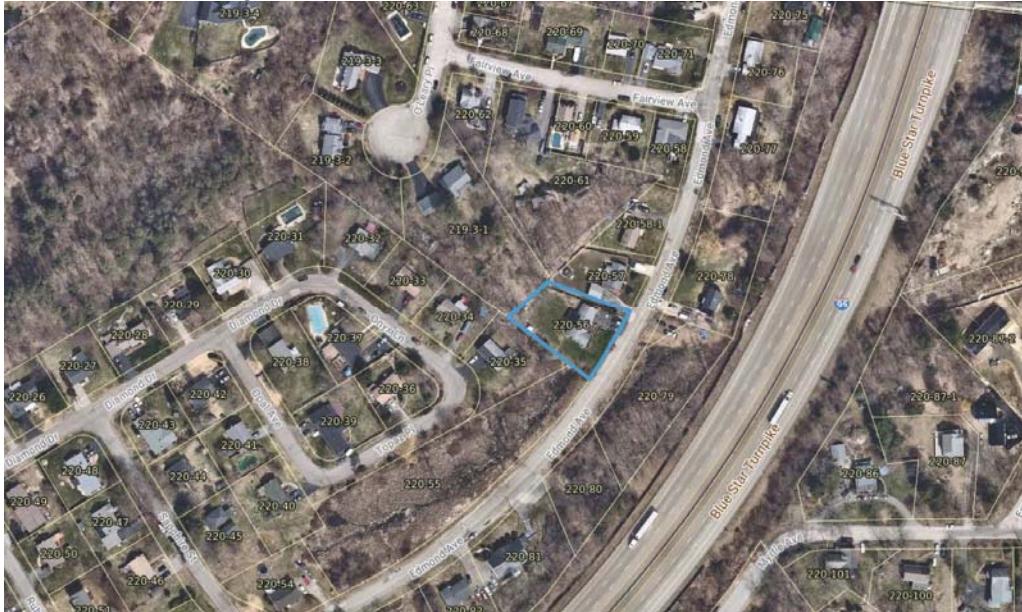
The project received wetland conditional use permit approval from the Planning Board on November 21, 2019 for a two-story building addition with a footprint of 1,220 square feet in the area of the former mobile-MRI unit. The applicant proposes a permanent disturbance of 2,954 square feet and temporary disturbance of 1,610 square feet all within the 100' inland wetland buffer.

Planning Department Recommendation

Vote to approve a 1-year extension of the Conditional Use Permit Approval to expire on November 21, 2021.

VIII. CITY COUNCIL REFERRALS

A. Acceptance of drainage easement at 185 Edmond Avenue.



Description

The Department of Public Works has been improving and replacing existing sewer drainage pipes in the City, including in and around Edmond Avenue. Over the course of completing these improvements, City surveyors discovered a portion of the drain line over the property located at 185 Edmond Avenue was not secured within an easement. In advance of improvements to the drain line, and in consideration of landscaping improvements on the property, Ryan and Adrienne Cress have agreed to convey an easement over 1,081 square feet of their property in order to clear chain of title.

Planning Department Recommendation

Vote to recommend that the City Council authorize the City Manager to accept a drainage easement over land at 185 Edmond Avenue from Ryan and Adrienne Cress (Tax Map 220 Lot 56).