



MEMORANDUM

To: Planning Board
From: Juliet T.H. Walker, Planning Director *JTW*
Jillian Harris, Planner 1
Subject: Staff Recommendations for the February 18, 2021 Planning Board Meeting
Date: 02/12/2021

II. DETERMINATIONS OF COMPLETENESS

SUBDIVISION REVIEW

- A. The application of **The Fritz Family Revocable Living Trust, Owner**, for property located at **0 Patricia Drive** requesting Preliminary and Final Subdivision Approval.

Planning Department Recommendation

Vote to determine that the application is complete according to the Subdivision Regulations and to accept the application for consideration.

III. PUBLIC HEARINGS – OLD BUSINESS

- A. The request of **238 Deer Street, LLC, Owner**, for property located at **238 Deer Street** requesting a Conditional Use Permit in accordance with Section 10.1112.14 of the Zoning Ordinance for provision of no on-site parking spaces where 12 spaces are required. Said property is shown on Assessor Map 125 Lot 3 and lies within the Character District 4 (CD4) District.



Description

The project proposes a new 4-story mixed-use building on-site with commercial use on the first floor and 21 micro-apartments on the second through fourth floors. The proposed mixed-use building development does not have sufficient area on-site to accommodate off-street parking and therefore the applicant is requesting a conditional use permit in accordance with Section 10.1112.14 of the Ordinance to provide less than the required minimum parking.

At the January 21, 2021 meeting, the Planning Board postponed the application to give the applicant time to respond to the Board's request for other off and on-site parking options. The applicant has provided new information that includes a draft lease provision that require tenants that own a car to pay for off-site parking as coordinated by the landlord. In addition, parking options for tenants were also provided as supplemental information. Finally, one on-site space has been added to accommodate ride sharing and 15-minute loading and unloading.

Parking Conditional Use Permit

The off-street parking standards in the City's Zoning Ordinance for 21 residential units (of less than 500 s.f.) requires 0.5 spaces per unit for a total of 11 spaces and 5 visitor spaces. The Downtown Overlay District provides a credit of 4 spaces, which results in a total of 12 parking spaces required for this project. The applicant has indicated they cannot provide

any parking spaces on the site due to the size of the lot, that the parking demand will be less than what is required, and that the parking demand will be met by existing public parking.

Per Section 10.1112.14 of the Zoning Ordinance, the Planning Board may grant a conditional use permit to allow a building or use to provide less than the minimum parking spaces required by the off-street parking standards. An application for a conditional use permit for off-street parking must include a parking demand analysis, which is required to be reviewed by the Technical Advisory Committee. The TAC reviewed the parking demand analysis with the applicant at the December 8, 2020 meeting and provided some feedback to the applicant, which was incorporated into a subsequent revision.

Per Section 10.1112.142, an application for a conditional use permit shall identify permanent measures to reduce parking demand including but not limited to proximity to public transit and shared parking on a separate lot. The applicant has listed the following factors for consideration:

- Pedestrian Accommodations: Proximity to downtown – the location of the site is ideal in that residents of the units can easily walk from the apartment to the downtown on the existing sidewalk network without needing a car. Sidewalks – A robust sidewalk network is provided in the area that allows for easy walking from the site to the downtown for the purpose of business or personal.
- Bicycle Accommodations: Per Section 10.1116.11 of the Zoning Ordinance (see attached ordinance section), 1 bicycle space for each 5 dwelling units or portion thereof is required for a multifamily dwelling. The developers will provide internal individual storage units that will be sized to accommodate bicycles. These units will be accessible from street level and will have easy access. A bicycle rack with space for a minimum of 5 bicycles will be provided outside.
- Transit: Within 650 feet of the site, there are three bus stops, providing direct access to Routes 40, 41, 42, & 43.
- Ride Share: A ride share waiting area will be provided that includes a bulletin board to share postings of those offering and needing a ride.
- Reduced parking demand for micro-apartments: The applicant indicates that the intended market for these units will be for tenants who do not necessarily have a car or who do not rely on frequent access to a car for transportation, which will result in overall reduced demand for off-street parking.

Planning Department Staff Comments

In considering whether to grant the CUP, the Board may require more off-street parking spaces than the minimum requested by the applicant. The Zoning Ordinance also allows for off-street parking requirements to be met through a shared parking arrangement where the off-street parking is provided on a separate lot or lots. If the Planning Board would like to consider requiring that some off-street parking be provided by the applicant through a shared parking arrangement, an appropriate stipulation would be as follows:

Off-street parking for X number of spaces, shall be provided via a long-term lease or shared parking agreement with a property owner within vicinity of the project. The lease or shared parking agreement for the off-site parking spaces shall be renewed annually for a period of 5 years from the issuance of the final certificate of occupancy for the project and shall be dedicated or assigned to units via a rental agreement. The

method of guaranteeing that this condition is met shall be mutually agreed upon by the applicant and the City Attorney and Planning Director prior to issuance of a building permit.

Planning Department Recommendation

1) *Vote to find that the one [NOTE: or as modified by above stipulation if considered] off-site parking space provided will be adequate and appropriate for the proposed use of the property.*

2) *Vote to grant the conditional use permit as presented [NOTE: or insert above stipulation here].*

3. To install a wildflower seed mix in the storm-water treatment basin.
4. To show buffer placards on the plan and install them along the edge of the proposed roadway.
5. To show snow storage location on the plan.
6. To not have any roadway lighting unless deemed necessary by the City of Planning Board at the driveway entrance.
7. To insure that topsoil used on the site is made up of organic material.

Regarding item number 1 above, while the Planning Department staff understands the intent of the proposed requirement to require NOFA standards for lawn care on the properties, we do not recommend this as a stipulation of approval. The City's Zoning Ordinance already restricts the use of fertilizers other than low phosphate and slow release nitrogen in wetland buffer areas and prohibits the application of pesticides or herbicides in wetland areas. The Ordinance does not otherwise limit application of fertilizers on single family residential lots and requiring a specific standard for lawn care for these lots that is unsupported by the Zoning Ordinance would be unreasonable and difficult to enforce. Furthermore, as these plans are required to be recorded, we do not recommend a separate deed restriction we feel it is sufficient to note the prohibition on dumping of litter in the wetland buffer (which is not allowed) on the plans to be recorded.

Technical Advisory Committee Review

The TAC reviewed the site plan review application at the January 5, 2021 meeting and voted to recommend approval with the following stipulations:

1. A note shall be added to the plan that if the Fire Department requires fire suppression in these homes, the Engineer of record shall review the water service(s) shown and show that this design will be sufficient for pressure and flow.
2. The applicant should update the plans to show two separate lines as approved by DPW.
3. The plans should note an easement to the City to access the valves, leak detection and metering for water service.
4. The drainage for the shared driveway should be upgraded to provide infiltration or some other approved method of treatment.
5. Plans should clearly delineate where the public ROW is proposed to end and the private street ROW to begin.
6. The plan label should be updated to "Street" rather than "Drive" and the applicant should include the proposed name of the street for consideration by the Planning Board.
7. Plans should be updated to correct the right side of the bar scale as it is mislabeled. It reads 20 but should be 30.
8. Plans shall be updated to correct driveway access and turnarounds. The upper driveway is short and connects to the main drive at an odd angle. It will be difficult for vehicles to enter or exit the garage closest to the retaining wall.
9. The applicant should request a waiver from the Planning Board for the road and right-of-way width as it is less than the required minimum in the subdivision regulations.
10. A road maintenance agreement should be provided for Planning Board review

On January 14, 2021 the applicant submitted revised plans addressing stipulations 1-2 & 4-10 to the satisfaction of the Planning Department. The remaining stipulation is included in the recommended stipulations of approval below.

Waiver Request

The applicant requests a waiver from the 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 width of the right-of-way is 50', but the proposed pavement width is 18'. The Planning Board may waive any provision of these Regulations by a vote of six members, provided that such waiver will not have the effect of nullifying the spirit and intent of the Master Plan or these Regulations; and in granting a waiver, the Planning Board may require such conditions as will in its judgment secure the objectives of these Rules and Regulations.

Planning Department Recommendation

- 1) *Vote to grant the Wetland Conditional Use Permit with the following stipulations:*
 - 1.1) *The Plans to be recorded shall note that dumping of any kind including landscape debris is prohibited in the wetland buffer.*
 - 1.2) *The Plans to be recorded shall note the prohibition of salting of the road way due to the close proximity to a prime wetland.*
 - 1.3) *The Plans shall be updated to show a wildflower seed mix in the storm-water treatment basin.*
 - 1.4) *Permanent wetland boundary markers shall be installed during project construction and at select locations along the roadway to be verified in consultation with the Planning Department to indicate proximity to wetland areas.*
 - 1.5) *Plans shall be updated to show snow storage locations.*
 - 1.6) *Plans shall be updated to note that topsoil used on the lots shall not include pesticides and fertilizers.*

- 2) *Vote to grant a waiver to the Subdivision Regulations -- Section VI(3)(B) Street Rights of Way and Residential Street Minimum Standards to allow 18' 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*

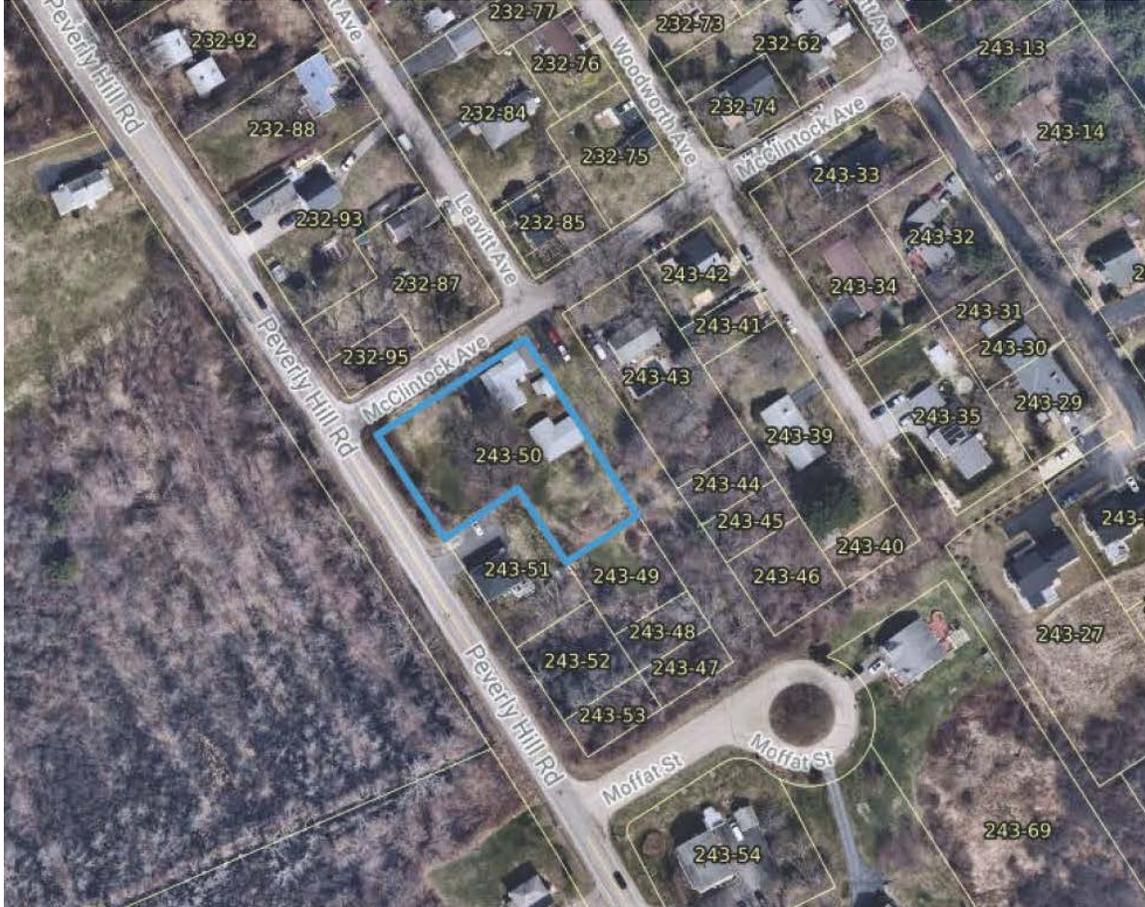
[OR]

 - 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*

- 3) *Vote to grant Preliminary and Final Subdivision (Lot Line Revision) Approval with the following stipulations:*
 - 3.1) *On Plan Sheet 4 – Update contractor’s note to remove asphalt berm on Martha’s Terrace to be removed.*
 - 3.2) *On Plan Sheet 9 – remove reference to “water services to the City of Portsmouth” in note 20 and Proposed Access Easement detail and in note 20 – Sheet 8.*
 - 3.3) *On Sheet 9 – Note 20 to be revised to “Easement to be provided to the City of Portsmouth over the entire private ROW area for the purposes of accessing water valves and leak detection of the water lines.”*
 - 3.4) *Sheet 9, add to drainage easement note in detail that the easement is to the “City of Portsmouth”*
 - 3.5) *Rain garden design and detail shall be reviewed and approved by DPW.*
 - 3.6) *Applicant shall grant and record an easement granting stormwater flowage rights across Lot 11-1 from the Private ROW.*
 - 3.7) *Property monuments shall be set as required by the Department of public Works prior to the filing of the plat.*
 - 3.8) *GIS data shall be provided to the Department of Public Works in the form as required by the City.*
 - 3.9) *The final plat(s) shall be recorded at the Registry of deeds by the City or as deemed appropriate by the Planning Department.*
- 4) *Vote to recommend to the City Council that the private road be renamed to Hemlock Way.*

III. PUBLIC HEARINGS – OLD BUSINESS (Cont.)

- C. City Council referral on the request of **ASRT, LLC, Owner**, for the restoration of involuntarily merged lots at **138 Leavitt Avenue** to their pre-merger status pursuant to NH RSA 674:39-aa.



Description

At its meeting on December 14, 2020, the City Council considered a request from Attorney Pelech on behalf of his client, requesting the restoration of involuntarily merged lots at 138 Leavitt Street to their pre-merger status pursuant to NH RSA 674:39-aa. The Council voted to refer this request 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.

Assessing Department Review

The Assessing Department has reviewed the request and a memo from the City Assessor is included in the packet.

Planning Department Recommendation

Vote to recommend that the Council deny the request for restoration of involuntarily merged lots as requested by the owner.

IV. PUBLIC HEARINGS – NEW BUSINESS

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

A motion is required to consider these items together

- A.** The application of **Clipper Traders, LLC, Portsmouth Hardware and Lumber, LLC, Owners and Iron Horse Properties, LLC, Owner and Applicant**, for properties located at **105 Bartlett Street and Bartlett Street** requesting Site Plan Review approval for the demolition and relocation of existing structures and the construction of 152 dwelling units in 3 buildings, and associated community space, paving, lighting, utilities, landscaping and other site improvements. Said properties are shown on Assessor Map 157 Lot 1 and Lot 2 and Assessor Map 164 Lot 1 and 4-2 and lie within the Character District 4-W (CD4-W) and Character District 4-L1 (CD4-L1) Districts.
- B.** The application of **Clipper Traders, LLC, Portsmouth Hardware and Lumber, LLC, Owners and Iron Horse Properties, LLC, Owner and Applicant**, for properties located at **105 Bartlett Street and Bartlett Street** requesting Wetland Conditional Use Permit Approval in accordance with Section 10.1017 of the Zoning Ordinance for work within the 25-foot, 50-foot, and 100-foot wetland buffers to North Mill Pond which includes the removal of existing impervious surfaces and buildings, construction of 3 stormwater outlets, repaving of an existing access drive and parking lot, construction of a linear waterfront trail and community space, and construction of three new buildings which will result in a net overall reduction in impervious surfaces of 28,792 square feet. Said properties are shown on Assessor Map 157 Lot 1 and Lot 2 and Assessor Map 164 Lot 1 and 4-2 and lie within the Character District 4-W (CD4-W) and Character District 4-L1 (CD4-L1) Districts.

The applicant has requested to postpone the applications to the March meeting to allow time for responding to recommended stipulations of approval from TAC and the Conservation Commission.

Planning Department Recommendation

Vote to postpone the application to the March 18, 2021 Planning Board meeting.

IV. PUBLIC HEARINGS – NEW BUSINESS (Cont.)

- C. The application of **Michael Petrin, Owner**, for property located at **239 Northwest Street** requesting Wetland Conditional Use Permit approval in accordance with Section 10.1017 of the Zoning Ordinance to renovate an existing home with portions of the new construction in the wetland buffer. Said property is shown on Assessor Map 122 Lot 3 and lies within the General Residence A (GRA) District.



Description

The proposed plan includes removing a small ell on the back of the house and constructing a two story addition on the back with a new deck where the ell is being removed. The plan also calls for removing the deck in the front of the house and building steps to the front door.

Conservation Commission Review

1. *The land is reasonably suited to the use activity or alteration.* The entire property is located in the tidal buffer of the North Mill Pond. The applicant seeks to build an addition on the side of the house away from the North Mill Pond.
2. *There is no alternative location outside the wetland buffer that is feasible and reasonable for the proposed use, activity or alteration.* Given that the entire property is within the wetland buffer there is no other location for the proposed improvements outside of the buffer.
3. *There will be no adverse impact on the wetland functional values of the site or surrounding properties.* Given that the proposed work is away from the pond and no stormwater from the site directly enters the pond there should be no adverse impacts to the North Mill Pond.

4. *Alteration of the natural vegetative state or managed woodland will occur only to the extent necessary to achieve construction goals.* The project proposes to remove a small lawn area to construct the addition at the rear of the house.

5. *The proposal is the alternative with the least adverse impact to areas and environments under the jurisdiction of this section.* The proposed project should not cause adverse impacts to the wetland given the location of the work.

6. *Any area within the vegetated buffer strip will be returned to a natural state to the extent feasible.* The plan does not show any landscape plans but staff recommends the applicant consider an area of new shoreland buffer planting be considered by the applicant in an area across the street near the dock.

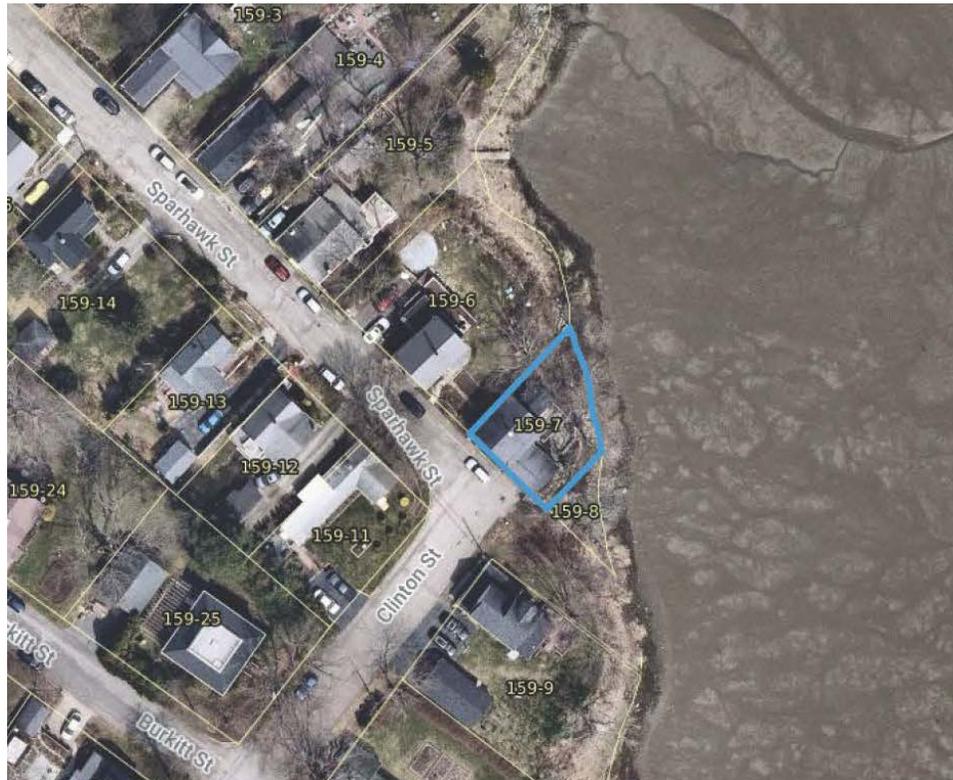
The Conservation Commission reviewed the wetland conditional use permit application at the January 13, 2021 meeting and voted unanimously to recommend approval as presented.

Planning Department Recommendation

Vote to approve the Wetland Conditional Use Permit as presented.

IV. PUBLIC HEARINGS – NEW BUSINESS (Cont.)

- D. The application of **Michael J. O'Connor, Owner**, for property located at **163 Sparhawk Street** requesting Wetland Conditional Use Permit approval in accordance with Section 10.1017 of the Zoning Ordinance for in-kind replacement of garage steps and a landing and installation of stormwater infiltration. Said property is shown on Assessor Map 159 Lot 7 and lies within the General Residence A (GRA) District.



Description

This application is to remove and replace an existing garage landing and stairs behind the garage and install stormwater infiltration practices and landscaping. The overall project will reduce impervious surface by 128 square feet in the tidal wetland buffer with the removal of a stone walkway at the top of a steep bank.

Conservation Commission Review

1. *The land is reasonably suited to the use activity or alteration.* The entire property is located in the tidal buffer zone of the North Mill Pond. The applicant seeks to replace an existing garage with an in-kind replacement.
2. *There is no alternative location outside the wetland buffer that is feasible and reasonable for the proposed use, activity or alteration.* Given that the entire property is within the wetland buffer there is no other location for the proposed improvements outside of the buffer.
3. *There will be no adverse impact on the wetland functional values of the site or surrounding properties.* The proposed improvements are for an in-kind replacement of an existing garage. The proposed changes should result in a net reduction of impacts as

the new design is incorporating infiltration practices to reduce stormwater runoff from directly entering the North Mill Pond.

4. *Alteration of the natural vegetative state or managed woodland will occur only to the extent necessary to achieve construction goals.* The project is an in-kind replacement and no natural vegetation will be removed as it is located within the existing footprint of a garage that is there today.

5. *The proposal is the alternative with the least adverse impact to areas and environments under the jurisdiction of this section.* The proposed in-kind replacement should not cause adverse impacts to the wetland.

6. *Any area within the vegetated buffer strip will be returned to a natural state to the extent feasible.* The applicant is not proposing any impacts to natural vegetation in the vegetated buffer strip. Given the steep slopes of the site it is not clear that there are any opportunities for new wetland buffer plantings.

The Conservation Commission reviewed the wetland conditional use permit application at the January 13, 2021 meeting and voted unanimously to recommend approval as presented.

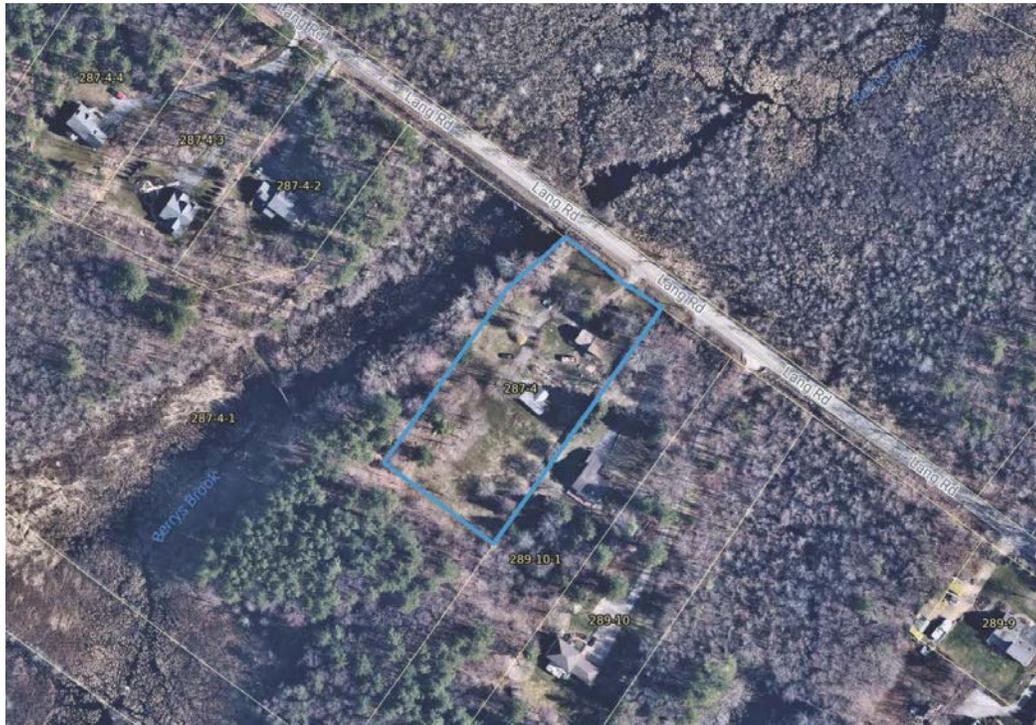
Planning Department Recommendation

Vote to approve the Wetland Conditional Use Permit as presented with the following stipulation:

- 1) *Permanent wetland boundary markers shall be installed during project construction.*

IV. PUBLIC HEARINGS – NEW BUSINESS (Cont.)

- E. The application of **Robert Gigliotti, Owner**, for property located at **292 Lang Road** requesting Wetland Conditional Use Permit approval in accordance with Section 10.1017 of the Zoning Ordinance to construct an addition of an entryway to the front of the house and a deck behind the house, along with a replacement tank and associated piping within the wetland buffer zone. Said property is shown on Assessor Map 287 Lot 4 and lies within the Single Residence B (SRB) District.



Description

The proposed plan includes the addition of an entryway to the front of the house and a deck behind the house. The entry way is a 16 Square feet with a 12 square foot stairway. The deck dimensions will be 180 Square feet with a stairway dimension of 6 square feet. In addition a replacement tank is proposed in the location of the current septic system and piping both of which are replacements within the wetland buffer zone. The tank will be 56 Square feet and the in ground pipes will be 40 Square feet within the wetland buffer zone.

Conservation Commission Review

1. *The land is reasonably suited to the use activity or alteration.* The large portion of the property is located in the 100 foot wetland buffer zone and the proposed improvements are necessary given the configuration of the existing home.
2. *There is no alternative location outside the wetland buffer that is feasible and reasonable for the proposed use, activity or alteration.* Given that the current configuration of the house this is the most reasonable location for the proposed improvements.

3. *There will be no adverse impact on the wetland functional values of the site or surrounding properties.*

The proposed work is fairly minor to make the home functional for living. There should be no impact from the proposed improvement to the wetland functional values.

4. *Alteration of the natural vegetative state or managed woodland will occur only to the extent necessary to achieve construction goals.* All of the work is proposed in disturbed upland areas around the existing home. There is no natural vegetation proposed to be impacted from this project.

5. *The proposal is the alternative with the least adverse impact to areas and environments under the jurisdiction of this section.* The proposed should not cause adverse impacts to the wetland given the location of the work.

6. *Any area within the vegetated buffer strip will be returned to a natural state to the extent feasible.* The plan does not show any landscape plans or areas of vegetation to be installed. This is the first phase of a longer term re-development on an existing site.

The Conservation Commission reviewed the wetland conditional use permit application at the January 13, 2021 meeting and voted unanimously to recommend approval with the following stipulations:

1. The applicant shall install a stone drip edge around the house and under the proposed deck to allow infiltration of storm-water.
2. The applicant shall stake the wetland buffer during project construction.

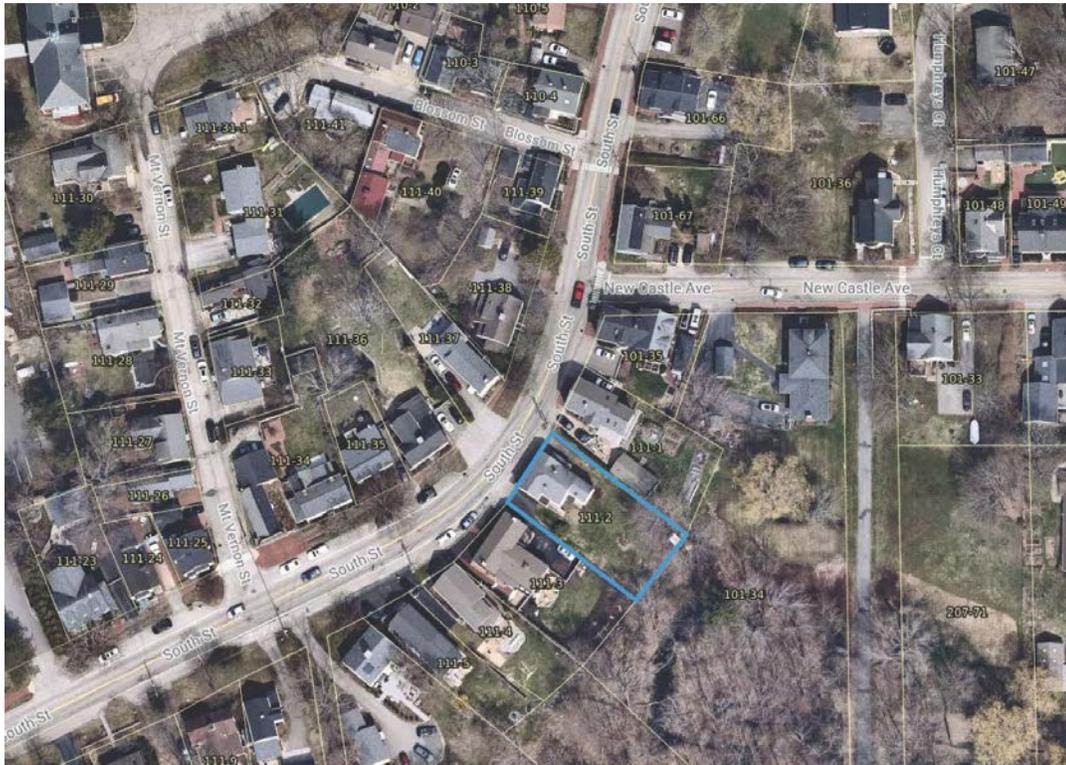
Planning Department Recommendation

Vote to approve the Wetland Conditional Use Permit with the following stipulations:

- 1) *The applicant shall install a stone drip edge around the house and under the proposed deck to allow infiltration of storm-water.*
- 2) *The applicant shall stake the wetland buffer during project construction.*
- 3) *Permanent wetland boundary markers shall be installed during project construction.*

IV. PUBLIC HEARINGS – NEW BUSINESS (Cont.)

- F. Application of **JJCM Realty, LLC and Topnotch Properties, LLC, Owners**, for property located at **232 South Street** requesting Wetland Conditional Use Permit approval in accordance with Section 10.1017 of the Zoning Ordinance to construct a new deck and staircase onto the existing residential structure, relocate an existing storage shed and install native plantings in the buffer. Said property is shown on Assessor Map 111 Lot 2 and lies within the Single Residence B (SRB) District.



Description

This project proposed a disturbance of 636 square feet of disturbance within the 100' City of Portsmouth Wetland Buffer for the construction of an addition, new deck, and staircase onto the existing residential structure, and 262 sq. ft of disturbance for the relocation of an existing storage shed and subsequent proposed buffer enhancements consisting of installation of native plantings.

Conservation Commission Review

1. *The land is reasonably suited to the use activity or alteration.* The rear of the property comes up against the wetland buffer and the front of the property is very close to the road. To create an outdoor space this project is reasonable where proposed.
2. *There is no alternative location outside the wetland buffer that is feasible and reasonable for the proposed use, activity or alteration.* Given the configuration of the house this is the most reasonable location for the proposed improvements.
3. *There will be no adverse impact on the wetland functional values of the site or surrounding properties.* The proposed work is a good distance from the wetland and any

runoff will travel across vegetated lawn before entering the wetland. A good deal of buffer is still provided and is proposed to be enhanced by this project.

4. *Alteration of the natural vegetative state or managed woodland will occur only to the extent necessary to achieve construction goals.* All of the work is proposed in a previously developed lawn area behind the house. The natural vegetation will be enhanced by moving the shed further from the wetland and planting native vegetation.

5. *The proposal is the alternative with the least adverse impact to areas and environments under the jurisdiction of this section.* The proposed should not cause adverse impacts to the wetland given the location of the work and the proposed plantings represent an enhancement to the buffer.

6. *Any area within the vegetated buffer strip will be returned to a natural state to the extent feasible.* The plan provides for new native plantings in the wetland buffer at the rear of the property.

The Conservation Commission reviewed the wetland conditional use permit application at the January 13, 2021 meeting and voted unanimously to recommend approval as presented.

Planning Department Recommendation

Vote to approve the Wetland Conditional Use Permit as presented with the following stipulation:

- 1) *Permanent wetland boundary markers shall be installed during project construction.*