



MEMORANDUM

To: Planning Board
From: Juliet T.H. Walker, Planning Director *JTW*
Subject: Staff Recommendations for the March 25, 2021 Planning Board Meeting
Date: March 22, 2021

I. PUBLIC HEARINGS – NEW BUSINESS

- A.** The application of **The Matthew Beebe Revocable Trust 2006, Owner**, for property located at **81 Lincoln Avenue** requesting Conditional Use Permit approval in accordance with Section 10.815 of the Zoning Ordinance for the conversion of an existing studio to a Garden Cottage with 515 square feet of gross floor area. Said property is shown on Assessor Map 113 Lot 35 and lies within the General Residence A (GRA) District.

Description

Different from an Accessory Dwelling Unit, a Garden Cottage that complies with the standards of Section 10.815 is otherwise exempt from the residential density standards of the Zoning Ordinance (e.g. minimum lot area per dwelling unit).

Under the off-street parking requirements, the garden cottage and principal dwelling are required to provide 2 off-street parking spaces (1 for the garden cottage of greater than 500 square feet and 1.3 for the primary dwelling rounded up to the nearest whole number).

The Ordinance requires that a Garden Cottage comply with the following standards (Section 10.815.30).

Required Standard	Planning Department Comments
The existing accessory building shall not be expanded either vertically or horizontally, other than through the addition of a front entry not to exceed 50 sq. ft., or a side or rear deck not to exceed 300 sq. ft.	No vertical or horizontal expansions are proposed as part of this application.
The garden cottage shall not be larger than 600 sq. ft. gross floor area.	The proposed Garden Cottage is less than 600 square feet gfa.
A garden cottage that is within the required yard for the zoning district shall not have any windows or doors higher than eight feet above grade facing the adjacent property.	The applicant is requesting a modification to this requirement as there are existing windows on the building that do not meet this requirement.

Required Standard	Planning Department Comments
The principal dwelling unit and the garden cottage shall not be separated in ownership (including by condominium ownership); and either the principal dwelling unit or the garden cottage shall be occupied by the owner of the property.	The principal dwelling will continue to be occupied by the property owners.
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 applicant has indicated they have plans to connect a new service line to the proposed Garden Cottage. The final approval for that connection will need to be received from the City's Sewer Division as part of the building permit process.

In order to grant a conditional use permit for a Garden Cottage, the Planning Board must first make the following findings (Sec. 10.815.40):

Required Findings	Planning Department Comments
1. Exterior design of the Garden Cottage is consistent with the existing single-family dwelling on the lot.	This is an existing accessory structure that is compatible in appearance to the principal dwelling and the proposed exterior changes appear to be limited to replacing the front doors and converting the existing garage door on the side with a window wall.
2. The site plan provides adequate open space, landscaping and off-street parking for both the Garden Cottage and the primary dwelling.	The property has an existing backyard that is proximate to both the Garden Cottage and the primary dwelling. 4 off-street parking spaces are provided, which exceeds the minimum requirements of the Zoning Ordinance (1.3 for the primary dwelling and 1 for the garden cottage).
3. The Garden Cottage will maintain a compatible relationship to adjacent properties in terms of location and design, and will not significantly reduce the privacy of adjacent properties.	The Garden Cottage is located close to the property line between and behind the abutting property at 87 Lincoln, which the applicant also owns. If the abutting property was not owned by the same owner, privacy could be an issue although the applicant is not changing anything significantly about the building that would further reduce privacy.
4. The Garden Cottage will not result in excessive noise, traffic or parking congestion.	This is an existing moderately dense residential street. The location of this Garden Cottage will not result in excessive noise, traffic, or parking congestion.

Request for Modifications:

In granting a conditional use permit for a garden cottage, Section 10.815.50 of the Zoning Ordinance allows the Planning Board to modify a specific dimensional or parking standard set forth in Section 10.815.30 provided that the Board finds such modification will be consistent with the required findings in Section 10.815.40. The applicant has requested a modification to Section 10.815.33 that requires that a garden cottage that is located within the required yard (minimum setback from the lot line) shall not have any windows or doors higher than eight feet above grade facing the adjacent property. The applicant has request that the existing windows on the accessory structure that face the abutting properties back yard be allowed to remain.

Planning Department Recommendation

- 1) *Vote to find that the requested modification to allow the existing windows to remain will be consistent with the required findings of Section 10.815.40 and to grant a modification to the requirements of Section 10.815.33 as requested by the applicant.*
- 2) *Vote to find that the application meets the requirements of Section 10.815.40 and to grant to grant the conditional use permit as presented, with the following stipulation:*
 - 2.1) *In accordance with Sec. 10.815.70 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. 10.815, including the owner-occupancy requirement, and shall renew the certificate of use annually.*

I. PUBLIC HEARINGS – NEW BUSINESS (Cont.)

B. The application of **Joseph & Jessica DeNuzzio, Owners, and Drew Williams, Applicant** for property located at **105 Thornton Street** requesting a Conditional Use Permit in accordance with Section 10.112.14 of the Zoning Ordinance for provision of 1 on-site parking space where 2 spaces are required. Said property is shown on Assessor Map 159 Lot 18 and lies within the General Residence A (GRA) District.



Description

The off-street parking standards in the City's Zoning Ordinance for 1.3 spaces for residential units that are larger than 750 square feet. The zoning calls for rounding up the total parking to the nearest whole number, so 2 spaces are required for this property, which is a single family home. The applicant is modifying an existing garage to living space and thereby reducing the total number of compliant parking spaces on the property to 1.

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 shall be reviewed by the Site Plan Review Technical Advisory Committee.

Per Section 10.1112.142, an application for a conditional use permit shall identify permanent measures to reduce parking demand. The applicant's existing driveway has sufficient room to park two cars side by side. However, the driveway is located partially on City right-of-way and therefore the spaces do not technically meet the dimensional requirements of the Ordinance. The City has no plans to expand or otherwise modify the width of Thornton Street and it is reasonable to expect that the applicant will continue to be able to use the driveway as it is currently designed.

Technical Advisory Committee Review

The TAC reviewed this application at the March 9, 2021 meeting and had no concerns or comments.

Planning Department Recommendation

Vote to find that the number of off-street parking spaces provided will be adequate and appropriate for the proposed use of the property and to grant the conditional use permit as presented.

I. PUBLIC HEARINGS – NEW BUSINESS (Cont.)

- C.** Application of **The S. Dick Revocable Trust of 2019, Owner**, for property located at **869 Woodbury Avenue** requesting Conditional Use Permit approval in accordance with Section 10.814 of the Zoning Ordinance for the construction of an Attached Accessory Dwelling Unit of 676 square feet gross floor area to be located above an existing attached two-car garage. Said property is shown on Assessor Map 219 Lot 37 and lies within the Single Residence B (SRB) District

Description

In addition to the dimensional requirements of Section 10.521, 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 applications meets this requirement.
Either the principal dwelling unit or the accessory dwelling unit shall be occupied by the owner of the dwelling.	The current owner plans to continue to reside in the principal dwelling.
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 application meets 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.	This property is served by municipal sewer service.
An interior door shall be provided between the principal dwelling unit and the ADU.	There is an interior door connecting from the principal dwelling through the garage to the proposed interior stairs to the new ADU.
The ADU shall not have more than two bedrooms and shall not be larger than 750 sq. ft. gross floor area.	The proposed ADU is 676 square feet and has one bedroom.
Any exterior changes to the single-family dwelling shall maintain the appearance of a single-family dwelling.	The proposed addition is in keeping with the appearance of the existing house.
No portion of the AADU shall be closer to the front lot line than the existing front wall of the principal dwelling unit.	The application meets this requirement.

Required Standard	Planning Department Comments
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.	This application meets this requirement.
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 application meets this requirement.
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 application meets this requirement.
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 application meets this requirement.

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 design of the ADU is consistent with the principal dwelling.
2. The site plan provides adequate open space, landscaping and off-street parking for both the ADU and the primary dwelling.	There is an existing yard that is accessible to both the ADU and the principal dwelling and adequate size to be shared space. There is sufficient off-street parking on the site for both dwellings.
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.	This addition above an existing attached garage will maintain a compatible relationship with adjacent properties and will not impact privacy.
4. The ADU will not result in excessive noise, traffic or parking congestion.	This 1-bedroom addition in an existing residential neighborhood will not have undue impact on noise, traffic, or parking.

Planning Department Recommendation

Vote to grant the conditional use permit as presented, with the following stipulation:

- 1. In accordance with Section 10.814.70 of the Zoning Ordinance, the owner is required to obtain a certificate of use from the Planning Department verifying compliance with all standards of Section 10.814, including the owner-occupancy requirement, and shall renew the certificate of use annually.*

I. PUBLIC HEARINGS – NEW BUSINESS (Cont.)

- D. Application of **Hope for Tomorrow Foundation, Owner**, for property located at **355 (also known as 315) Banfield Road** requesting a Wetland Conditional Use Permit in accordance with Article 10 Section 10.1017 to install a security fence along the property line resulting in 5 square feet of fence footings in the wetland and 10 square feet in the wetland buffer. Said property is shown on Assessor Map 266 Lot 5 and lies within the Industrial (I) District.

Description

This application is to install a 6 foot tall chain link fence in the wetland and wetland buffer on this property. The fence will have footings including 5 square feet in the wetland area and 10 square feet in the wetland buffer area.

1. *The land is reasonably suited to the use activity or alteration.* The applicant is putting up security fence for the school.
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 fence is along the property line this is the appropriate location.
3. *There will be no adverse impact on the wetland functional values of the site or surrounding properties.* The proposed fence will have a minimal impact on 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.* The project does not propose to impact vegetation.
5. *The proposal is the alternative with the least adverse impact to areas and environments under the jurisdiction of this section.* The proposal is only putting concrete where the fence needs added support as such this is the least impacting alternative.
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.

Conservation Commission Review

The Conservation Commission reviewed this application at the February 10, 2021 meeting and voted unanimously to recommended approval of the application with one stipulation:

- 1) That the fence be kept at least six inches off the ground within the wetland area.

This stipulation was added to allow for the passage of wildlife underneath the fence.

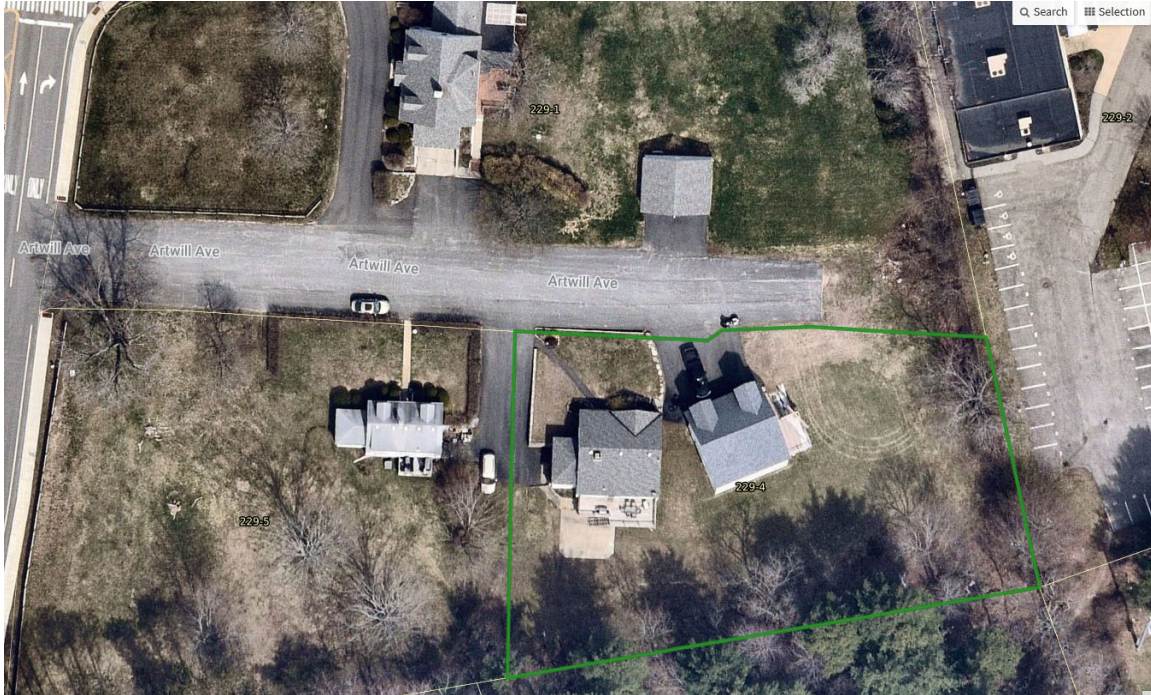
Planning Department Recommendation

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

- 1. The fence shall be kept at least six inches off the ground within the wetland area.*

I. PUBLIC HEARINGS – NEW BUSINESS (Cont.)

- E. Application of **Karona, LLC, Owner**, for property located at **36 Artwill Avenue** requesting Conditional Use Permit approval in accordance with Section 10.814 of the Zoning Ordinance for the construction of a 1-bedroom 750 square foot Detached Accessory Dwelling Unit located above an existing detached garage. Said property is shown on Assessor Map 229 Lot 4 and lies within the Single Residence B (SRB) District.



Description

The applicant is seeking approval to create an accessory dwelling unit above an existing detached garage. The garage was previously constructed but there is a partially finished space for a living unit above that was added by the previous owner.

In July 2017, the applicant submitted an application to the Planning Board for a conditional use permit (CUP) for a detached accessory dwelling unit (DADU) that requested modifications to the dimensional requirements for maximum gross floor area and distance from the principal dwelling. Because the property at the time was not owner-occupied, the applicant also requested that the Planning Board approval of the be contingent upon a future sale of the property. Therefore, the Planning Board approval would have needed to stipulate that a certificate of use would not be issued until the new owner occupied the property. The application was denied approval by the Planning Board.

In September 2017, the applicant submitted a new modified CUP application that proposed to comply with the maximum gross floor area limit and also proposed an ownership arrangement that he believed legally satisfied the owner-occupancy requirement (if not the actual intent) of the Ordinance. The application was denied

approval by the Planning Board due to the fact that the ownership arrangement did not satisfy the owner-occupancy requirement for an ADU.

The current applicant is now the 100% owner and occupant of 36 Artwill Avenue and therefore satisfies the ownership requirements of the Ordinance. However, the application still requires modifications to some of the required standards, as summarized below.

Note, because the garage was constructed after the effective date of the ADU Ordinance, it would not qualify as a Garden Cottage.

Per Section 10.814.20 of the Ordinance, in order for a lot to be eligible for an accessory dwelling unit, the lot and all proposed structures and additions to existing structures shall conform to zoning regulations. This lot was nonconforming for street frontage and, for this reason, the applicant applied to the Zoning Board of Adjustment requesting a variance to allow 0' street frontage where 100' is required as this lot does not have frontage on a road that has been approved and accepted by the City. The Zoning Board granted the requested relief at their February 2021 meeting.

In addition to the dimensional requirements of Section 10.521, the Ordinance requires that a DADU comply with the following standards (Section 10.814.30 and 10.814.50).

Required Standard	Planning Department Comments
The principal dwelling unit and the accessory dwelling unit shall not be separated in ownership.	The application complies with this requirement.
Either the principal dwelling unit or the accessory dwelling unit shall be occupied by the owner of the dwelling. When the property is owned by one or more trusts, one of the dwelling units shall be the principal place of residence of the beneficiary(ies) of the trust(s).	The application complies with this requirement.
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 application complies 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.	This property is on municipal sewer.

Required Standard	Planning Department Comments
In a Single Residence district, a lot with a DADU shall comply with the minimum lot area for the district, but need not comply with the minimum lot area per dwelling unit.	This property meets this requirement.
The DADU shall not have more than two bedrooms and shall not be larger than 750 sq. ft. gross floor area; except that the maximum gross floor area shall be 1,000 sq. ft. if the lot area is 2 acres or more.	This application meets this requirement.
The DADU shall be clearly subordinate to the principal single-family dwelling in scale, height and appearance.	The applicant is requesting a modification to this standard (see below).
The façade area of the DADU that faces a street on which the lot has frontage shall be no more than 40 percent of the combined visible façade areas of the principal single family dwelling and the DADU facing the same street.	The applicant has requested a modification for this standard given that the garage was constructed by a previous owner. Furthermore, as this property technically does not have street frontage, there is question as to whether the applicant would need to comply with this requirement.
The building height of the DADU shall be less than the building height of the principal single-family dwelling.	The applicant has requested a modification to this standard considering the garage was constructed by a previous owner.
The DADU shall be architecturally consistent with the principal dwelling through the use of similar materials, detailing, and other building design elements.	The garage is architecturally consistent with the principal dwelling.
The DADU shall be separated from the single-family dwelling by at least 20 feet.	The applicant has requested a modification from this standard given that the garage was constructed by a previous owner. The proposed DADU will be 10.2' from the principal dwelling. The Inspection Department previously confirmed that a foundation permit for the existing garage was approved in 2013/2014.
The front wall of the DADU shall be set back at least 10 feet further from the front lot line than the existing front wall of the single-family dwelling.	The applicant has requested a modification from this standard given that the garage was constructed by a previous owner.

Required Standard	Planning Department Comments
No portion of the DADU shall be located in any required front yard, regardless of the location of the single-family dwelling.	The applicant has requested a modification from this standard given that the garage was constructed by a previous owner. Furthermore, as this property technically does not have street frontage, there is question as to whether the applicant would need to comply with this requirement.

In order to grant a conditional use permit for an DADU, 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 exterior design of the ADU is generally consistent with 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 proposed accessory dwelling unit will have access to usable open space and the existing landscaping on the property will not be altered. As the foundation for the garage was previously approved by the City, the proposed DADU will not be further limiting the open space access for the primary residence.
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 ADU is not located in close proximity to existing homes or on adjacent lots and is generally compatible with the neighborhood.
4. The ADU will not result in excessive noise, traffic or parking congestion.	The proposed 1-bedroom ADU, which will be located on an existing residential street with sufficient off-street parking will not result in excessive noise, traffic, or parking congestion.

Request for Modifications:

The applicant requests modifications of required standards pursuant to Section 10.814.70 of the Zoning Ordinance. Some of these standards have been added and/or clarified in subsequent amendments to the Zoning Ordinance since the previous application. The modifications requested are as follows:

- That the facade area of the DADU that faces the street shall be no more than 40% of the combined visible façade.
- That the building height of the DADU shall be less than the building height of the principal dwelling.

- That the DADU shall be separated from the principal dwelling by at least 20 feet.
- That the front wall of the DADU shall be set back at least 10 feet further from the front lot line than the existing front wall of the single family dwelling.
- No portion of the DADU shall be located in any required front yard.

Planning Department Recommendation

- 1) *Vote to find that the requested modifications will be consistent with the required findings of Section 10.814.60 and to grant a modification to the requirements of Section 10.814.53, 10.814.54, 10.814.55, and 10.814.56 as requested by the applicant.*
- 2) *Vote to grant the conditional use permit as presented, with the following stipulation:*
 - 2.1. *In accordance with Section 10.814.70 of the Zoning Ordinance, the owner is required to obtain a certificate of use from the Planning Department verifying compliance with all standards of Section 10.814, including the owner-occupancy requirement, and shall renew the certificate of use annually.*

I. PUBLIC HEARINGS – NEW BUSINESS (Cont.)

- F. Request of the **City of Portsmouth** for properties located on **Sagamore Avenue** between Little Harbor Road and 1177 Sagamore Avenue for a Wetland Conditional Use Permit under Article 10 Section 10.1017 of the Zoning Ordinance to install a low pressure sewer system in the City right-of-way as well as on private property resulting in 13,380 square feet of temporary tidal buffer zone impact and 6,755 square feet of temporary inland wetland buffer impact and trench work that will result in 56 square feet of permanent wetland buffer impact.

Description

This application is from the City of Portsmouth for a project that will install municipal sewer infrastructure along Sagamore Avenue to an area currently served only by individual septic systems. The new system installation will create temporary impacts as low pressure sewer lines are installed under roadways and in yards of existing homes.

1. *The land is reasonably suited to the use activity or alteration.* There are 7860 square feet of temporary impact on private property and in City right-of-way and 32 square feet of impact in the previously disturbed tidal buffer zone. Within the undisturbed 100' wetland buffer zone there are 350 square feet of temporary impact. Given this project will replace aging septic systems with City sewer the proposed impacts are warranted to achieve an improved water quality for Sagamore Creek.
2. *There is no alternative location outside the wetland buffer that is feasible and reasonable for the proposed use, activity or alteration.* Given that sewer needs to follow the road network there is no alternative location for this project.
3. *There will be no adverse impact on the wetland functional values of the site or surrounding properties.* The proposed 35 square feet of wetland buffer impact is all within a previously disturbed wetland buffer area mainly in front lawns of house. This temporary impact consists of new sewer covers and will not create an adverse impact to the wetland functional values in the adjacent wetland areas.
4. *Alteration of the natural vegetative state or managed woodland will occur only to the extent necessary to achieve construction goals.* The project is mainly in City right-of-way or lawn areas. Where there are potential impacts with trees or other vegetation the route has been selected to reduce these impacts.
5. *The proposal is the alternative with the least adverse impact to areas and environments under the jurisdiction of this section.* The proposal is not proposing any new impacts in undisturbed buffer areas and as such is the least impacting alternative.
6. *Any area within the vegetated buffer strip will be returned to a natural state to the extent feasible.* The applicant has worked to reduce impacts to natural vegetation.

Conservation Commission Review

Conservation Commission reviewed this application at the March 10, 2021 meeting and voted unanimously to recommended approval with one member abstaining.

Planning Department Recommendation

- 1) *Vote to grant the Wetland Conditional Use Permit as presented.*

II. CITY COUNCIL REFERRAL – PUBLIC HEARING

- A.** Request of **Todd Buttrick, Owner**, for the restoration of involuntarily merged lots at **900 Middle Road** to their pre-merger status pursuant to NH RSA 674:39-aa.

Assessing Department Review

The Assessing Department is still reviewing this request and has requested the hearing be postponed to the April meeting.

Planning Department Recommendation

Vote to postpone this hearing to the April Planning Board meeting.

III. DESIGN REVIEW – PUBLIC HEARING

- A. The request of **North Mill Pond Holdings LLC (Applicant), and One Raynes Ave LLC, 31 Raynes Ave LLC, and 203 Maplewood Ave LLC (Owners)** for property located at **31 Raynes Avenue, 203 Maplewood Avenue, and 1 Raynes Avenue** requesting Design Review for a 5-story mixed-use building and a 5-story hotel building with associated site improvements. Said properties are shown on Assessor Map 123 Lot 14, Map 123 Lot 13, Map 123 Lot 12, Map 123 Lot 10 and lie within the Character District 4 (CD4) District.



Description

This item is a request for Design Review under the Site Plan Review Regulations. Under the State statute (RSA 676:4,II), the Design Review phase is an opportunity for the Planning Board to discuss the approach to a project before it is fully designed and before a formal application for Site Plan Review is submitted. The Design Review phase is not mandatory and is nonbinding on both the applicant and the Planning Board.

Although the State statute calls this pre-application phase “design review,” it does not encompass review of architectural design elements such as façade treatments, rooflines and window proportions. Rather, it refers to site planning and design issues such as the size and location of buildings, parking areas and open spaces on the lot; the interrelationships and functionality of these components, and the impact of the development on adjoining streets and surrounding properties.

The process as outlined in Section 2.4.3 of the Site Review regulations is that the Board first has to determine that the request for design review includes sufficient information to allow the Board to understand the project and identify potential issues and concerns,

and, if so, vote to accept the request and schedule a public hearing. *Completion of the design review process also has the effect of vesting the project to the current zoning.*

Design review discussions must take place in a public hearing. At the conclusion of the public hearing process, the Board makes a determination that the design review process for the application has ended.

At the December 2020 Planning Board meeting, the Board voted to accept the request and schedule a public hearing.

Planning Department Recommendation

Vote to find that the Design Review process is complete.