



MEMORANDUM

To: Planning Board
From: Juliet T.H. Walker, Planning Director *JTW*
Subject: Staff Recommendations for the May 20, 2021 Planning Board Meeting
Date: May 14, 2021

II. PUBLIC HEARINGS – NEW BUSINESS

- A. Request of **Stone Creek Realty, LLC, (Owner), and CPI Management, LLC, (Applicant)**, for property located **53 Green Street** for a Wetland Conditional Use Permit according to Section 10.1017 of the Zoning Ordinance for the demolition of an existing building, construction of a 5-story mixed-use building and renovation of an existing parking area that will result in 98 square feet of impervious surface in the 25' to 50' tidal wetland buffer zone and 8,425 square feet of impervious surface in the 50' to 100' tidal wetland buffer zone representing an overall net reduction of 3,058 square feet of impervious surface in the tidal wetland buffer areas from the existing condition. Said property is shown on Assessor Map 119 Lot 02 and lies within the Character District 5 (CD5) District, the Historic District, and the North End Incentive Overlay District.

Description

The applicant has requested to postpone this application to the next scheduled Planning Board meeting.

Planning Department Recommendation

Vote to postpone this application to the June Planning Board meeting.

II. PUBLIC HEARINGS – NEW BUSINESS (Cont.)

- B. Request of **Noble Island Condominium Association, (Owner)** and **CP Management, Inc. (Applicant)**, for property located at **500 Market Street** for a Wetland Conditional Use Permit according to Section 10.1017 of the Zoning Ordinance to remove and replace existing decks on Buildings A, B, and C including the addition of new structural supports with no expansion of the existing footprint resulting in 27 square feet of permanent impact and up to 1,240 square feet of temporary impacts all within the 100' tidal wetland buffer area. Said property is shown on Assessor Map 120 Lot 2 and lies within the Character District 4-L1 (CD4-L1) District.

Description

This project proposes replacement of existing decks on three buildings on Nobles Island. The decking is at the rear of each building overlooking but not over the water. The proposed replacement decks will maintain the existing footprint but will include new concrete footings to support the decks.

Conservation Commission Review

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

1. *The land is reasonably suited to the use activity or alteration.* Given that the current decks are in need of repair and the applicant is not proposing to expand the footprint the land is suited to the activity. The only change to the design is the addition of concrete piers under the replacement deck in an unvegetated area.
2. *There is no alternative location outside the wetland buffer that is feasible and reasonable for the proposed use, activity or alteration.* There is no location outside of the buffer that is reasonable given this is a replacement of the existing decks that are failing in place.
3. *There will be no adverse impact on the wetland functional values of the site or surrounding properties.* As long as erosion control measures are put in place to protect the tidal areas, as described in the submitted plans, the proposed project will not create any new impacts to the wetland or wetland buffer as described by the applicant.
4. *Alteration of the natural vegetative state or managed woodland will occur only to the extent necessary to achieve construction goals.* The proposed project may have a temporary impact on the small lawn area at the top of the bank. According to the applicants plans this area is specified to be replanted once the work is complete.
5. *The proposal is the alternative with the least adverse impact to areas and environments under the jurisdiction of this section.* The proposal is replacing an existing condition with a structurally improved condition. Given the work is proposed in a largely unvegetated portion of the buffer with no change in footprint this is the least adverse impact possible for the proposed work.
6. *Any area within the vegetated buffer strip will be returned to a natural state to the extent feasible.* The area of lawn at the top of the bank should be revegetated where impacted by construction. Given the narrow width there is not much opportunity to plant shrubs or larger vegetation and allow access behind the buildings.

The Conservation Commission reviewed the wetland conditional use permit application at the May 12, 2021 meeting and voted unanimously to recommend approval with the following stipulations:

1. The applicant shall follow NOFA standards in the maintenance of the area between the decks and the waterline.
2. That applicant shall consider other salt tolerable plantings other than in addition to grass for planting along the area between the decks and the waterline.
3. That any treatment to the decks (i.e. bleaching) be done in a way to prevent overspray or contamination of soil or water.
4. The applicant shall use composite decking in order to avoid the use of paint and other chemical treatment required for wooden decks.

Planning Department Recommendation

Vote to grant a Wetland Conditional Use Permit with the following stipulations:

1. *The property owners shall utilize NOFA (Northeast Organic Farming Association) approved practices (or comparable equivalent) for maintenance of the area between the decks and the waterline.*
2. *The applicant shall consider other salt tolerable plantings in addition to grass for planting along the area between the decks and the waterline.*
3. *Any treatment to the decks (i.e. bleaching) shall be done in a manner to prevent overspray or contamination of soil or water.*
4. *The applicant shall use composite decking in order to avoid the use of paint and other chemical treatment required for wooden decks*

II. PUBLIC HEARINGS – NEW BUSINESS (Cont.)

- C. Request of **Brora, LLC, Owner, and 210 Commerce Way LLC, Applicant**, for property located at **Shearwater Drive (at intersection of Portsmouth Boulevard and Market Street)** for a Wetland Conditional Use Permit according to Section 10.1017 of the Zoning Ordinance for an after the fact approval for cutting of vegetation on 88,700 square feet in the wetland and vegetated buffer areas. Said property is shown on Assessor Map 217 Lot 2-1975 and lies within the Office Research (OR) District.

Description

The applicant has requested to postpone this application, which is still pending Conservation Commission review.

Planning Department Recommendation

Vote to postpone this application to the June Planning Board meeting.

III. PUBLIC HEARINGS – CITY COUNCIL REFERRAL

- 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.

Description

At its meeting on February 8, 2021, the City Council considered a request from Todd Buttrick, owner of property at 900 Middle Road to the existing lot to its pre-merger status, which would result in the creation of four individual lots as shown in the attached exhibits.

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 City Council deny this request as recommended by the City Assessor.

IV. PRELIMINARY CONCEPTUAL CONSULTATION

- A. Request of **Naveesha Hospitality, LLC, Owner, and Monarch Village, LLC, Applicant**, for property located at **3548 Lafayette Road** for Preliminary Conceptual Consultation for a multi-family residential redevelopment consisting of 75 units in 6 existing buildings and 2 proposed new buildings with associated site improvements. Said property is shown on Assessor Map 297 Lot 6 and lies within the Gateway Corridor (G1) District.
- B. Request of **Banfield Realty, LLC, Owner** for property located at **375 Banfield Road** for Preliminary Conceptual Consultation for the construction of a 75,000 s.f. industrial warehouse building and associated parking, stormwater management, lighting, utilities and landscaping. Said property is shown on Assessor Map 266 Lot 7 and lies within the Industrial (I) 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.