



MEMORANDUM

To: Planning Board
From: Juliet T.H. Walker, Planning Director *JTW*
Stefanie Casella, Planner 1
Subject: Staff Recommendations for the July 15, 2021 Planning Board Meeting
Date: July 12, 2021 (revised July 13, 2021)

II. PUBLIC HEARINGS – OLD BUSINESS

It is recommended that items II(A), 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 **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.

IV.A. Application of **Stone Creek Realty, LLC, Owner, and Boston & Maine Corporation, Owner**, for properties located at **53 Green Street** and at the intersection of Market Street and Green Street requesting Preliminary and Final Subdivision approval (Lot Line Revision) to transfer 4,852 sq. ft. from Assessor Map 119 Lot 3 to Assessor Map 119 Lot 2 which will increase the total lot area for the receiving lot from 72,200 sq. ft. to 76,670 sq. ft. and the street frontage from 86 ft. to 104 ft. Said properties lie within the Character District 5 (CD5) District, the Transportation Corridor District (TC), Downtown Overlay District (DOD), Historic District, and the North End Incentive Overlay District.

IV.B. Application of **Stone Creek Realty, LLC, Owner**, for property located at **53 Green Street** requesting Site Plan Review approval for the demolition of an existing building and construction of a 5-story mixed-use building with 121,544 sq. ft. of gross floor area and 29,374 sq. ft. building footprint that includes 1,898 sq. ft. of commercial space on the first floor, 48 upper floor residential units, 97 parking spaces and 22,095 sq. ft. of community space as well as paving, utilities, lighting, landscaping and associated site improvements. Said property is shown on Assessor Map 119 Lot 02 and lies within the Character District 5 (CD5) District, Downtown Overlay District (DOD), Historic District, and the North End Incentive Overlay District.

Description

The applicant is requesting a wetland conditional use permit, a lot line adjustment, and site plan review approval to construct a 5-story mixed use building. The project will include demolition of the existing building, removal of impervious surfaces in the tidal wetland buffer zones and creation of a portion of the North Mill Pond Greenway multi-use trail along the waterfront, conveyance of land to increase frontage, and construction of a mixed-use residential building with commercial space on the first floor and a parking garage in the basement. Associated site improvements will consist of paving, lighting, landscaping, and creation of public community space.

The project as currently proposed complies with all zoning regulations applicable to the site. Previously, the proposed building and site did not comply with the required front lot line buildout. The applicant had applied to relief from the Zoning Board of Adjustment in June and the request was denied. Subsequently the applicant has modified the project to bring it into compliance with the zoning ordinance by widening the building along the frontage and increasing the size of the proposed community space along Green Street.

The application is still pending review and approval by the Historic District Commission and is currently scheduled to be heard on July 14th.

Wetland Conditional Use Permit

Conservation Commission Review

According to Article 10 Section 10.1017.50 of the Zoning Ordinance, the applicant must satisfy the following criteria for approval of this project:

1. *The land is reasonably suited to the use activity or alteration.* The proposed project will redevelop an existing commercial site within the existing building and parking area footprint and will create a public linear park along the waterfront. The proposed development will result in a reduction in the overall impervious surface within the wetland buffer area and the public path will be porous pavement and will include enhancements and improvements to the shoreline. The land is reasonably suited for the proposed alterations and activities.
2. *There is no alternative location outside the wetland buffer that is feasible and reasonable for the proposed use, activity or alteration.* The property is constrained by its proximity to the railroad and therefore an alternative location outside the wetland buffer would not be feasible or reasonable without substantially reducing the footprint of the building and the vehicular accessways and parking. The proposed public greenway park along the waterfront is an appropriate use and improvement for the location. The project has been sited in a way to reduce the net impervious surface, provide adequate parking and safety access to the building, and maintain the required separation from the railroad. The design of the project is feasible and reasonable for the proposed use working within the property's constraints

3. *There will be no adverse impact on the wetland functional values of the site or surrounding properties.* The proposed building is not closer to the edge of wetland than the existing and there is a reduction in impervious surface with this proposal. The proposal will improve the stormwater runoff on the site by adding a new treatment and detention system. The pedestrian trail that is proposed will be porous pavement. The project provides community space that will provide community benefit while managing access and preventing further degradation of the waterfront. The proposed landscaping is an improvement over the existing undeveloped area in the buffer which currently consists of lawn, scrub, and a mix of invasive species.
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 have minimal impact to existing natural areas and replace previously disturbed areas along the shoreline with low-mow grass and native vegetation. The project will provide a landscaped and natural vegetated buffer between public and private use areas and the shoreline.
5. *The proposal is the alternative with the least adverse impact to areas and environments under the jurisdiction of this section.* This application proposes to improve the conditions in the wetland buffer zone and reduce overall wetland area impact. The proposed development stays within the existing footprint of developed area and adds enhanced stormwater management.
6. *Any area within the vegetated buffer strip will be returned to a natural state to the extent feasible.* The only work in the vegetated buffer strip for this project is the construction of a stormwater outlet. After the outlet is constructed, any impacted areas will be restored with native trees and plantings. By enhancing and improving the vegetated buffer along the waterfront, public and private access to the shoreline will be managed and improved to prevent further degradation of the shoreline.

This Commission reviewed this application at the April 14, 2021 meeting and voted unanimously to recommend approval with the following stipulations (meeting details can be found here -- <https://www.cityofportsmouth.com/planportsmouth/events/conservation-commission-21>):

1. Move the greenway path closer to the building and align it over the fire access that as shown on the plan set.
2. The applicant shall agree to maintain all greenway according to NOFA standards.
3. The applicant shall add an update the porous paving maintenance plan to include: no sand spreading and increase sweeping from once to twice per year.
4. The applicant shall add more native understory plants to the pond side of the greenway path.

On July 7th, the applicant submitted updated plans addressing stipulations 1, 3, and 4 to the satisfaction of the Planning Department. Stipulation number 2 has been added to the recommendation below.

Site Plan Review and Subdivision (Lot Line Revision) Approval

Technical Advisory Committee Review

At the June 1, 2021 TAC meeting this application was review and reccomended for approval with the following stipulations (meeting details can be found here -- <https://www.cityofportsmouth.com/planportsmouth/events/site-review-technical-advisory-committee-4>):

1. The applicant shall evaluate the intersection of Vaughan Street and Green Street to confirm that larger trucks (including the City fire truck) can navigate to and from Vaughan Street onto Green Street.
2. The applicant shall update the landscaping plan to confirm the surface treatment for the pavement around the proposed loading zone.
3. The applicant shall update the landscaping plan to indicate that the landscape plants along the water are salt tolerant in case of inundation.
4. The community space easement shall reflect that the City shall not be responsible for maintenance of landscaping in the community space areas.
5. The applicant shall add signage and/or markings to delineate the fire lane area.
6. The applicant will reach out to the abutting property owner (AC Hotel) to discuss possible coordination related to allow for ongoing maintenance and access to the rain garden area on the abutting property.

On July 7th, the applicant submitted updated plans addressing the stipulations to the satisfaction of the Planning Department, DPW, and Fire Department.

Planning Department Comments

As required by the Zoning Ordinance, in order to receive the incentives for increased building footprint and height, the project needs to provide community space that includes a continuous public greenway with a multi-use path that is parallel to and located within 50 feet of the waterfront. The greenway shall include legal and physical access to abutting lots or public ways. The City is currently in the process of designing and permitting the publically owned portions of the North Mill Pond Greenway on either side of this property, so this project will provide a key link in this important City project. In addition, the project applicant is working with the City to relocate a public access easement for a future connection to the trail across property owned by the applicant (Map 123-15-1) behind 1 Raynes Avenue. This adjustment was requested by the Conservation Commission and staff in order to adjust the alignment of the proposed greenway trail and move farther away from the shoreline. *If applicant is willing, the Planning Board should consider adding this as a condition of approval.*

Planning Department Recommendation

Wetland Conditional Use Permit

1. *Vote to grant a Wetland Conditional Use Permit with the following stipulation:*
 - 1.1) *The property owners shall utilize NOFA (Northeast Organic Farming Association) approved practices (or comparable equivalent) for maintenance of landscaped areas within the wetland buffer.*

Subdivision (Lot Line Revision)

2. *Vote to grant Preliminary and Final Subdivision Approval with the following stipulations:*
 - 2.1) *The public sewer easement shall be 20' wide centered on the line (10' either side of the line) to the extent possible given the proximity to the property line. Final easement and deed to be reviewed and approved by the DPW Director and Legal Department prior to final acceptance by the City Council.*
 - 2.2) *Property monuments shall be set as required by the Department of Public Works prior to the filing of the plat.*
 - 2.3) *GIS data shall be provided to the Department of Public Works in the form as required by the City.*
 - 2.4) *The final plat and all easement deeds shall be recorded concurrently at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.*

Site Plan Review

3. *Vote to grant Site Plan Approval with the following stipulations:*

Conditions Precedent (prior to the issuance of a building permit):

- 3.1) *For the community space easement for the North Mill Pond Greenway, the City shall have maintenance rights for the trail, but any landscaped areas shall be maintained by the property owner.*
- 3.2) *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.*
- 3.3) *The applicant shall prepare a Construction Management and Mitigation Plan (CMMP) for review and approval by the City's Legal and Planning Departments.*
- 3.4) *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.*

Conditions Subsequent:

- 3.4) *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;*
- 3.5) *A stormwater inspection and maintenance report shall be completed annually and copies shall be submitted to the City's Planning and Public Works Departments.*

II. PUBLIC HEARINGS – OLD BUSINESS (Cont.)

- B.** Application 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

This application is still pending review by the Conservation Commission and the applicant has requested to postpone this application to the next scheduled meeting.

Planning Department Recommendation

Vote to postpone this application to the August Planning Board Meeting.

II. PUBLIC HEARINGS – OLD BUSINESS (Cont.)

It is recommended that items II(C) and II(D) be discussed together and voted on separately. A motion is required to consider these items together

- C.** Application of **The Fritz Family Revocable Living Trust, Owner**, for property located at **0 Patricia Drive** for amended subdivision approval to revise the roadway design and stormwater treatment for a previously approved subdivision that proposes to subdivide a lot with an area of 137,549 s.f. and 414.15 of continuous street frontage on a private road into two (2) lots as follows: Proposed lot 1 with an area of 92,908 s.f. and 150 ft. of continuous street frontage on a private road; and Proposed Lot 2 with an area of 44,641 s.f. and 264.15 ft. of continuous street frontage on a private road. Said property is shown on Assessor Map 283 Lot 11 and lies within the Single Residence A (SRA) District.
- D.** **Application of The Fritz Family Revocable Living Trust, Owner**, for property located at **0 Patricia Drive** for amended wetland conditional use permit approval under Section 10.1017 of the Zoning Ordinance to revise the roadway design and stormwater treatment for a previously approved subdivision which will result in 5,718 square feet of temporary wetland buffer impact. Said property is shown on Assessor Map 283 Lot 11 and lies within the Single Residence A (SRA) District.

Description

The application was originally heard and approved at the February 18, 2021 Planning Board meeting. Since that time, the applicant applied for a state wetland permit with NHDES. As a result of consultation with NHDES staff, the applicant is proposing to amend their application to show engineered stormwater basins that use existing (previously constructed) catch basins rather than a vegetated infiltration area in the wetland buffer.

This application is still pending final review by the Conservation Commission and the City engineering staff.

Planning Department Recommendation

Staff will provide an updated recommendation after the Conservation Commission meeting on Wednesday the 14th.

III. PUBLIC HEARINGS – CITY COUNCIL REFERRALS (OLD BUSINESS)

Statutory Requirements for Unmerger of Involuntarily Merged Lots

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.

- A. Request of **David Higgins and Julia Higgins, Owners**, for the restoration of involuntarily merged lots at **344 Aldrich Road** to their pre-merger status pursuant to NH RSA 674:39-aa. Said property is shown on Assessor Map 166 Lot 50 and lies within the Single Residence B (SRB) District.

Description

At its meeting on May 3, 2021, the City Council considered a request from Thomas M. Keane, Esq, on behalf of the property owners David and Julia Higgins, requesting the restoration of involuntarily merged lots at 344 Aldrich Road to their pre-merger status pursuant to NH RSA 674:39-aa. The Council voted to refer this request to the Planning Board and the City Assessor for a report back.

Assessing Department Review

The City Assessor has reviewed this application and provided a report on her findings. Her review indicated that it is not clear from City records or records available at the registry and provided by the applicant whether the existing buildings were constructed across the pre-merger boundary line. The Assessor is recommending denial of this request unless more clarity can be provided on the location of the structures in relation to the pre-merger boundary line.

The applicant has requested to postpone consideration of their request to the next Planning Board meeting.

Planning Department Recommendation

Vote to postpone the public hearing on this request to the August Planning Board meeting.

- B. Request of Vincent Zingariello and Monica Abruzzese, Owners**, for the restoration of involuntarily merged lots at **135 Thaxter Road** to their pre-merger status pursuant to NH RSA 674:39-aa. Said property is shown on Assessor Map 166 Lot 15 and lies within the Single Residence B District.

Description

At its meeting May 17, 2021, the City Council considered a request from Bernie W. Pelech, Esq., on behalf of the property owners Vincent and Monica Zinganello, requesting the restoration of involuntarily merged lots at 135 Thaxter Road to their pre-merger status pursuant to NH RSA 674:39-aa. The Council voted to refer this request to the Planning Board and the City Assessor for a report back.

Assessing Department Review

The City Assessor has reviewed this request and concluded that it appears the property was voluntarily merged by an overt action of the owner.

Planning Department Recommendation

Vote to recommend that the City Council deny this request as recommended by the City Assessor.

IV. PUBLIC HEARINGS – NEW BUSINESS

- C. Application of **City of Portsmouth, NH (Owner and Applicant)** for property located on **Marjorie Street** for a Wetland Conditional Use Permit according to Section 10.1017 of the Zoning Ordinance to construct a municipal wastewater pump station with associated pavement apron which will result in 1,540 square feet of impact in the 100' wetland buffer. Said property is shown on Assessor Map 232, Lot 25 and lies within the Single Residence B (SRB).

Description

The City will be constructing a municipal wastewater pump station.

Conservation commission review

According to Article 10 Section 10.1017.60 Public and Private Utilities within Rights-of-Way in Wetlands and Wetland Buffers the applicant must satisfy the following conditions for approval of this project.

1. *The proposed construction is in the public interest.* The Department of Public Works has chosen to keep all of the work within an existing right of way. This location is appropriate for the work as it will allow City vehicle access without disturbing private property. This work is intended to enhance the City's wastewater system which is maintained and improved for public benefit.
2. *Design, construction, and maintenance methods will utilize best management practices to minimize any detrimental impact of such use upon the wetland and will include restoration of the site as nearly as possible to its original grade, condition and vegetated.* The project has been designed to minimize new impervious surface to just areas which will be plowed. A grass treatment swale and bio-infiltration area have been included in the project to minimize stormwater impacts currently existing and from new site development.
3. *No alternative feasible route exists which does not cross or alter a wetland or have a less detrimental impact on a wetland.* The location selected has the least detrimental impact to the wetland in this area. The proposal expanding a City Right of way with pavement, pump station equipment and new impervious surface. This work has been done in as minimally impacting fashion as possible to have the least adverse impact of all alternatives.
4. *Alterations of natural vegetation or managed woodland will occur only to the extent necessary to achieve construction goals.* The project does require removal of a large willow and some shrub vegetation but has been limited to only that necessary for project completion.

At the June 9, 2021 Conservation Commission meeting, the Commission voted unanimously to recommend approval with the following stipulation (meeting details can be found here -- <https://www.cityofportsmouth.com/planportsmouth/events/conservation-commission-22>):

1. The applicant shall add native trees and shrubs in an area where originally they were going to do a grass seed mix so that the additional plantings will act as more of a buffer and help prevent invasive species.

Planning Department Recommendation

Vote to grant Wetland Conditional Use Permit with the following stipulation:

- 1. The applicant shall add native trees and shrubs instead of the proposed grass seed mix.*

IV. PUBLIC HEARINGS – NEW BUSINESS (Cont.)

It is recommended that items IV(D) and IV(E) be discussed together and voted on separately. A motion is required to consider these items together

- D.** Application of **Banfield Realty, LLC, Owner**, for property located at **375 Banfield Road** requesting a Wetland Conditional Use Permit according to Section 10.1017 of the Zoning Ordinance for work related to the construction of an industrial building that will require the removal of pavement in the 100' wetland buffer to create a vegetated area which will receive some of the stormwater runoff from the property. Said property is shown on Assessor Map 266, Lot 7 and lies within the Industrial (I) District.

- E.** The application of **Banfield Realty, LLC, Owner**, for property located at **375 Banfield Road** requesting Site Plan review approval to demolish two existing commercial buildings and an existing shed and construct a 75,000 s.f. industrial warehouse building with 75 parking spaces as well as associated paving, stormwater management, lighting, utilities and landscaping. Said property is shown on Assessor Map 266 Lot 7 and lies within the Industrial (I) District.

Description

The applicant has requested to postpone consideration of these applications to the August Planning Board meeting.

Planning Department Recommendation

Vote to postpone the application to the August Planning Board Meeting.

IV. PUBLIC HEARINGS – NEW BUSINESS (Cont.)

- F. Application of **Chase Bailey, Owner and Applicant**, for property located at **3 Curriers Cove** requesting a Wetland Conditional Use Permit according to Section 10.1017 of the Zoning Ordinance to install a pool and patio area with a permanent impact of 360 square feet and a temporary impact of 320 square feet in the inland wetland buffer. Said property is shown on Assessor Map 204, Lot 12 and lies within the Single Residence A (SRA) District.

Description

The applicant has requested a wetland conditional use permit to construct an in-ground pool that will replace an existing pool.

Conservation Commission Review

According to Article 10 Section 10.1017.50 of the Zoning Ordinance, the applicant must satisfy the following conditions for approval of this project:

1. *The land is reasonably suited to the use activity or alteration.* This project is to install a patio and pool at the back side of the house furthest from the edge of the wetland immediately adjacent to the house. This is a reasonable location for this work.
2. *There is no alternative location outside the wetland buffer that is feasible and reasonable for the proposed use, activity or alteration.* Given the existing house is closer to the wetland this is the most reasonable location for the proposed patio and pool.
3. *There will be no adverse impact on the wetland functional values of the site or surrounding properties.* The construction of the patio and pool can be constructed to prevent any erosion and/or sedimentation to the area and wetland from which this buffer is defined.
4. *Alteration of the natural vegetative state or managed woodland will occur only to the extent necessary to achieve construction goals.* The patio and pool are proposed in the developed portion of the property where there is not currently vegetation.
5. *The proposal is the alternative with the least adverse impact to areas and environments under the jurisdiction of this section.* Given that the pool and patio are going where a pool previously existed and they are located on the opposite side of the house from the wetland this is the least impacting location for the pool and proposed patio.
6. *Any area within the vegetated buffer strip will be returned to a natural state to the extent feasible.* The plan provides for the addition of nine new trees on the outside of the proposed fence.

The Conservation Commission reviewed the wetland conditional use permit application at the June 16, 2021 meeting and voted unanimously to recommend approval of the project to the Planning Board as presented (meeting details can be found here -- <https://www.cityofportsmouth.com/planportsmouth/events/conservation-commission-34>).

Planning Department Recommendation

Vote to grant the Wetland Conditional Use Permit as presented.

IV. PUBLIC HEARINGS – NEW BUSINESS (Cont.)

It is recommended that items IV(G) and IV(H) be discussed together and voted on separately

A motion is required to consider these items together

- G.** Application of **Pease Development Authority, Owner, and Lonza Biologics, Applicant**, for property located at **55 and 101 International Drive**, requesting Subdivision (Lot Line Adjustment) Approval under Chapter 500 of the Pease Land Use Controls, Subdivision Regulations, to revise the lot line between the two lots increasing Map 305 Lot 6 by 2.66 acres from 43.37 acres to 46.02 acres. Said properties are shown on Assessor Map 305 Lot 6 and Lot 7 and lie within the Airport Business Commercial (ABC) District.
- H.** Application of **Pease Development Authority, Owner, and Lonza Biologics, Applicant**, for property located at **101 International Drive** requesting Site Plan Review Approval, under Chapter 400 of the Pease Land Use Controls, Site Review Regulations for the construction of a new 200 space parking lot along with associated site improvements including lighting, landscaping, and stormwater management. Said property is shown on Assessor Map 305 Lot 6 and lies within the Airport Business Commercial (ABC) District.

Description

The applicant has requested Site Plan and Subdivision approval for a lot line adjustment and the construction of a parking lot. Applicant is requesting to convey 2.66 acres in order to construct a 200 space parking lot adjacent to the existing parking garage.

Technical Advisory Committee Review

The TAC reviewed this application at the July 6, 2021 meeting and voted to recommend approval with the following stipulations (meeting details can be found here -- <https://www.cityofportsmouth.com/planportsmouth/events/site-review-technical-advisory-committee-5>):

1. Add an underdrain system at the proposed wall and account for groundwater at this location in the drainage calculations;
2. HW1 shall be corrected to read "Inv. Out"
3. Add Knox key switch in parking gate;
4. Confirm that the parking gate measures at least 20' when open;
5. Provide truck turning templates to verify truck access through the parking lot aisles to be reviewed by the Fire Department prior to Planning Board review.

On July 8, 2021 the applicant submitted revised plans addressing these stipulations to the satisfaction of the Planning Department.

Planning Department Recommendation

Subdivision Approval

1. *Vote to recommend Subdivision approval to the Pease Development Authority.*

Site Plan Approval

2. *Vote to recommend Site Plan approval to the Pease Development Authority.*

IV. PUBLIC HEARINGS – NEW BUSINESS (Cont.)

- I. Application of **Bow St Brew LLC, Owner and Applicant**, for property located at **121 Bow St Unit C1**, requesting Conditional Use Permit Approval in accordance with Section 10.1112.14 of the Zoning Ordinance, for the provision of no on-site parking spaces where three (3) are required. Said property is shown on Assessor Map 105 Lot 1-1 and lies within the Character District 4 (CD4), Historic District, and Downtown Overlay District (DOD).

Description

According to Section 10.1112.14 of the Zoning Ordinance, the Planning Board may grant a conditional use permit to allow less than the minimum number of off-street parking spaces than required. In this case, the minimum parking required is three (3) spaces. The applicant has requested a conditional use permit to provide no onsite parking for a newly renovated residential condominium unit. The owner is converting the existing office condominium into one residential condominium unit.

Technical Advisory Committee Review

The TAC reviewed this application at the July 6, 2021 meeting and did not have any comments or concerns about the proposed request.

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.

IV. PUBLIC HEARINGS – NEW BUSINESS (Cont.)

- J. Application of **Kaarin Milne, Owner and Applicant**, for property located at **315 Wibird Street** requesting Conditional Use Permit approval in accordance with Section 10.815 of the Zoning Ordinance to change the use of a studio space above a detached garage to a garden cottage with 610 square feet gross floor area. Said property is shown on Assessor Map 132 Lot 13 and lies within the General Residence A (GRA) District.

Description

The applicant is proposing to convert an existing studio space above a detached garage to a garden cottage. The gross floor area of the living space is 610 square feet (existing studio 405 sq. ft., bathroom and hallway 205 sq. ft.). The total building gross floor area is 904 square feet (including the garage space and stairs). Section 10.814.42 of the Attached Accessory Dwelling Unit section of the Zoning Ordinance excludes existing storage space, shared entries, or other spaces not exclusive to the accessory dwelling unit. By extension of intent, that same provision could apply to the gross floor area requirements for the Garden Cottage as well. However, the applicant is requesting a waiver to include the entire building in the Garden Cottage approval, which exceeds the maximum of 600 square feet.

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).

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.	The applicant is not proposing any exterior changes to the building.
The garden cottage shall not be larger than 600 sq. ft. gross floor area.	The applicant is requesting a modification to this requirement in order to allow the total gross floor area of the existing garage to be included in the Garden Cottage approval, which is 904 square feet.
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 application appears to comply with this requirement, but the only window facing an adjacent property is located behind a fence. If the applicant needs a modification for the height of the window, then the granting of such a modification seems merited given that privacy is protected.

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 applicant has indicated they will comply with this requirement.
Where municipal sewer service is not provided, the septic system shall meet NH Water Supply and Pollution Control Division requirements for the combined system demand for total occupancy of the premises.	The property is served by public sewer.

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.	The exterior design of the Garden Cottage will not be modified and is consistent with the existing single family dwelling.
2. The site plan provides adequate open space, landscaping and off-street parking for both the Garden Cottage and the primary dwelling.	The property provides adequate lawn space and off-street parking for both dwellings.
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 proposed GC will not significantly reduce the privacy of adjacent properties.
4. The Garden Cottage will not result in excessive noise, traffic or parking congestion.	The proposed on-bedroom GC will not result in excessive noise, traffic, or parking in this existing residential neighborhood.

Request for Modifications:

The applicant requests modifications of required standards pursuant to Section 10.815.50 of the Zoning Ordinance as follows:

- Include the entire accessory building in the Garden Cottage approval, allowing for a total square footage of 904 square feet.

Planning Department Recommendation

1. *Vote to find that the requested modification will be consistent with the required findings of Section 10.815.40 and to grant a modification to the requirements of Section 10.815.32 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 10.815.70 of the Zoning Ordinance, the owner is required to obtain a certificate of use from the Planning Department verifying compliance with all standards of Section 10.815, including the owner-occupancy requirement, and shall renew the certificate of use annually.*

IV. PUBLIC HEARINGS – NEW BUSINESS (Cont.)

- K.** The application of **Susan Alex, Owner and Applicant**, for property located at **50 Mount Vernon Street** requesting Conditional Use Permit approval in accordance with Section 10.815 of the Zoning Ordinance to construct a garden cottage with 425 square feet gross floor area of living space above an existing detached garage. Said property is shown on Assessor Map 111 Lot 29 and lies within the General Residence B (GRB) and Historic Districts.

Description

Allow the application references an “Accessory Dwelling Unit” in the narrative, the application is actually for a Garden Cottage. The applicant is proposing to convert the second floor of an existing detached garage to a Garden Cottage. The total proposed living area of the converted space is 425 square feet. The first floor of the building will consist of the existing garage and 170 square feet of entry/storage space including what appears to be a proposed laundry area. Section 10.814.42 of the Attached Accessory Dwelling Unit section of the zoning ordinance excludes existing storage space, shared entries, or other spaces not exclusive to the accessory dwelling unit. By extension of intent, that same provision could apply to the gross floor area requirements for the Garden Cottage as well. However, if the proposed laundry area is intended for use by the Garden Cottage, then the total square footage should include the storage/entry area. Even with this space included, the total gross floor area would be less than the maximum of 600 square feet.

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).

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

Other Land Use Board Approvals

This application was granted variances from the Zoning Board of Adjustment to add dormers to the existing garage requiring relief for an upward expansion in the left side yard and rear yard building setbacks. The application is currently pending review by the Historic District Commission.

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.	The applicant is proposing to add dormer windows on both sides of the garages. Addition of dormer windows is considered a vertical expansion of the building and will require that the Planning Board grant a modification to the zoning requirements.

Required Standard	Planning Department Comments
The garden cottage shall not be larger than 600 sq. ft. gross floor area.	The applicant has indicated that the proposed renovation of the second story will comply with this requirements. If the downstairs entry way is also included in the calculation, then the total square footage will still be less than 600 square feet.
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 they are proposing to add dormer windows on the second story.
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 applicant has indicated they will comply 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 served by municipal sewer.

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.	The proposed modifications appear to be consistent with the existing single family dwelling and the exterior renovations are required to receive HDC approval.
2. The site plan provides adequate open space, landscaping and off-street parking for both the Garden Cottage and the primary dwelling.	Both the single family dwelling and the garden cottage will have access to shared yard space and there will be sufficient off-street parking to serve both.
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 addition of the dormers may reduce the privacy for the adjacent property given the proximity of the garden cottage to the property line.

Required Findings	Planning Department Comments
4. The Garden Cottage will not result in excessive noise, traffic or parking congestion.	The addition of a one-bedroom garden cottage with sufficient off-street parking for both units will not result in excessive noise, traffic, or parking congestion in this existing residential neighborhood.

Request for Modifications:

The application requires modifications of required standards pursuant to Section 10.815.50 of the Zoning Ordinance as follows:

- Allow for the addition of windows higher than eight feet above grade to face the adjacent property.
- Allow for the upward expansion of the existing garage with the addition of dormers.

Planning Department Recommendation

1. [If the Planning Board finds that the addition of the dormers on the second story meets the spirit and intent of the ordinance...]

Vote to find that the requested modifications will be consistent with the required findings of Section 10.815.40 and to grant a modification to the requirements of Section 10.815.31 and 10.815.33.

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

2.1) In accordance with Section 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 Section 10.815, including the owner-occupancy requirement, and shall renew the certificate of use annually.

V. PRELIMINARY CONCEPTUAL CONSULTATION

- A. Application of **The Sagamore Group, LLC** for property located at **1169 & 1171 Sagamore Avenue** for Preliminary Conceptual Consultation to construct a 10-unit condominium complex. Said property is shown on Assessor Map 225 Lot 14 and Lot 15 and lie within the Mixed Residential Office (MRO) 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.

VI. OTHER BUSINESS

- A.** Review of Zoning Ordinance Amendment Priorities

VII. INFORMATIONAL ITEMS

- A.** Request from City Council to review June 15, 2021 memo from Rick Chellman re: waterfront and building siting

Description

Council voted to refer this item to the Planning Board at the July 12, 2021 meeting and requested a report back. The referenced memo has been added to the Planning Board packet for information purposes. This request will be considered at the August Planning Board meeting.