



City of Portsmouth
Planning Department
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Memorandum

To: Planning Board
From: Beverly Mesa-Zendt, Planning Director
Stefanie L. Casella, Planner
Date: May 13, 2022
Re: Recommendations for the May 19, 2022 Planning Board Meeting

I. APPROVAL OF MINUTES

Planning Department Recommendation

Board members should determine if the draft minutes include all relevant details for the decision making process that occurred at the April 21, 2022 meeting, and vote to approve meeting minutes with edits if needed.

Please note that minutes for the Special Meetings that took place on March 30, 2022 and on May 5, 2022 will be provided and available for approval at the June Planning Board Meeting

II. DETERMINATION OF COMPLETENESS

SUBDIVISION REVIEW

- (A) The request of **Elizabeth B Larsen Trust of 2012 (Owner)**, for property located at **668 Middle Street** requesting Preliminary and Final Subdivision approval.
- (B) The request of **4 Amigos LLC (Owner)**, for property located at **1400 Lafayette Road** and **951 Peverly Hill Road** requesting Preliminary and Final Subdivision approval

Planning Department Recommendations

1) Vote to determine that these applications are complete according to the Subdivision Regulations, (contingent on the granting of any required waivers under Section VI of the agenda) and to accept the applications for consideration.

SITE PLAN REVIEW

- (C) The request of **Elizabeth B. Larsen Trust of 2012 (Owner)**, for property located at **668 Middle Street** requesting Site Plan Review approval.

Planning Department Recommendations

1) Vote to determine that this application is complete according to the Site Plan Review Regulations, (contingent on the granting of any required waivers under Section VI of the agenda) and to accept the application for consideration.

III. PUBLIC HEARINGS – OLD BUSINESS

*The Board's action in these matters has been deemed to be quasi-judicial in nature.
If any person believes any member of the Board has a conflict of interest,
that issue should be raised at this point or it will be deemed waived.*

- A. The request of **Donald Lowell Stickney III (Owner)**, for property located at **213 Jones Avenue** requesting Conditional Use Permit under section 10.814 of the Zoning Ordinance and modification of the standards set forth in Sections 10.814.40 or 10.814.52 through 10.814.56, to construct a new single family residence and convert the existing residence into a Detached Accessory Dwelling Unit totaling 886 square feet of living area. Said property is shown on Assessor Map 222 Lot 69 and lies within the Single Residence B (SRB) district. (LU-22-34)

IV. PUBLIC HEARINGS – NEW BUSINESS

*The Board's action in these matters has been deemed to be quasi-judicial in nature.
If any person believes any member of the Board has a conflict of interest,
that issue should be raised at this point or it will be deemed waived.*

- A. The request of **Donald Lowell Stickney III (Owner)**, for property located at **213 Jones Avenue** requesting Wetland Conditional Use Permit under Section 10.1017 of the Zoning Ordinance to construct a new single family residence and convert the existing residence into a Detached Accessory Dwelling Unit totaling 886 square feet of living area. Said property is shown on Assessor Map 222 Lot 69 and lies within the Single Residence B (SRB) district. (LU-22-34)

It is recommended that Item III.A and IV.A be discussed together and voted on separately.

A motion is required to consider these items together.

Project Review, Decisions, and Recommendations

This application went before the Conservation Commission and is set to be heard at the Zoning Board of Adjustment on May 17, 2022. Please see below for more information.

Staff Review | Detached Accessory Dwelling Unit Standards 10.814

The Portsmouth Zoning Ordinance defines a detached accessory dwelling unit as:

An accessory dwelling unit that is constructed within an accessory building on a lot containing one single-family dwelling. A detached accessory dwelling unit may be connected to the single-family dwelling by an unenclosed structure (such as a breezeway) or by an unconditioned space.

In granting a conditional use permit for an accessory dwelling unit, the Planning Board may modify a specific standard set forth in Sections 10.814.52 through 10.814.56, including requiring additional or reconfigured off-street parking spaces, provided that the Board finds such modification will be consistent with the required findings in Section 10.814.60.

Staff Review and Analysis

Required Standards (10.815.30)	Meets Standard	Does Not Meet Standard	Comments
10.814.51 In a General Residence district, the combination of the principal dwelling and the DADU shall comply with the minimum lot area per dwelling unit specified for the district. (For example, the required lot area for a single-family dwelling with a DADU in the GRA district is 7,500 sq. ft. per dwelling unit multiplied by 2 dwelling units, or 15,000 sq. ft.) In a Single Residence or Rural 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.	✓		Minimum required lot is 15,000 SF. Existing lot area is 62,528 SF (1.4354 acres)
10.814.52 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.		✓	Existing 886 SF structure exceeds 750 SF
10.814.53 The DADU shall be clearly subordinate to the principal single-family dwelling in scale, height and appearance.	✓		
10.814.531 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.		✓	42% proposed
10.814.532 The building height of the DADU shall be less than the building height of the principal single-family dwelling.	✓		
10.814.533 The DADU shall be architecturally consistent with the principal dwelling through the use of similar materials, detailing	✓		Architecturally consistent
10.814.54 The DADU shall be separated from the single-family dwelling by at least 20 feet.	✓		45.5' separation
10.814.55 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.		✓	Existing structure is 33.3' from front lot line and proposed new primary will be 30.1' from lot line.
10.814.56 No portion of the DADU shall be located in any required front yard, regardless of the location of the single-family dwelling.	✓		30' setback observed

Request for Modifications:

The applicant requests the following modifications to 10.815.30 pursuant to Section 10.815.50 of the Zoning Ordinance:

1. 10.814.52 to exceed 750 square feet floor area (886 s.f. exists);
2. 10.814.531 to exceed 40% combined façade (42% proposed); and
3. 10.814.55 to permit the DADU to be set back less than 10 feet further from the front lot line than the primary dwelling (3.2 feet closer to the lot line than existing structure proposed).

Staff Analysis

Staff recommends approval of the modifications for the following reasons:

1. The total SF of the existing structures is reasonable and subordinate to the proposed 1,824 SF proposed primary structure and still less than the maximum 1000 SF contemplated in the ordinance.
2. The total lot size is 4X the required lot area for the use and well meets the requirements set forth in the ordinance.
3. Adequate space for off-street parking is available on site.
4. Although the ordinance seems to anticipate that existing structures will serve as primary structures, a flexible application of this standard allows for the addition of much needed housing units in the least impactful way for neighborhoods where existing lot sizes significantly exceed the minimum lot sizes.
5. A flexible interpretation of the ordinance meets the spirit and cited intent of state law for the provisions of ADUs including:
 - Benefits for aging homeowners, single parents, college graduates with high student debt, caregivers and disabled persons; and
 - Integrating affordable housing into the community with minimal negative impact.

Planning Board Review Criteria

Before granting a conditional use permit for an attached or detached ADU, the Planning Board shall make the following findings (10.814.60):

Required Findings (10.814.60)	Applicant Analysis
10.814.61 Exterior design of the ADU is consistent with the existing principal dwelling on the lot.	<i>Applicant Response</i> <i>No changes to the existing structure are proposed with the exception of updates to the existing façade with siding and window treatments with material to match the new, primary dwelling. This satisfies the requirement that the exterior design be consistent with the primary dwelling (10.814.61).</i>
10.814.62 The site plan provides adequate and appropriate open space, landscaping and off-street parking for both the ADU and the primary dwelling.	<i>Applicant Response: The site plan provides for a second driveway to service the new primary residence, and proposes 90.9% open space where the zoning ordinance requires 40%. This satisfies the requirements of 10.814.62.</i>

Required Findings (10.814.60)	Applicant Analysis
10.814.63 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.	<i>Applicant Response. The proposed DADU is a standalone structure which already exists, thus, its compatibility with adjacent properties in terms of location, design, parking layout, and privacy is satisfied (10.814.63) and it will not in any manner result in excessive noise, traffic or parking congestion (10.814.64). The proposed new structure is fully compliant with zoning.</i>
10.814.64 The ADU will not result in excessive noise, traffic or parking congestion.	<i>See above.</i>

Conservation Commission

The Conservation Commission reviewed the application at the April 13, 2022 meeting. The See below for analysis of criteria as stated in Section 10.1017.50 Of the Zoning Ordinance.

1. The land is reasonably suited to the use activity or alteration.

The previous project proposed a detention basin in the buffer where this project proposes to build a berm to capture the same area of stormwater runoff. The berm will essentially utilize the rear yard as a detention area to minimize the outflow from the culvert

2. There is no alternative location outside the wetland buffer that is feasible and reasonable for the proposed use, activity or alteration.

This is the second design for detaining the stormwater from the site. The applicant has stated that due to the topography and limited area on the site for detention this is the best location. There is grading and stone riprap proposed as an emergency spillway if the earthen berm is filled to capacity.

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

The proposed berm and detention area is all earthen with no impervious surface. The area where the berm is proposed will be vegetated and provide some limited habitat and water quality function to the adjacent wetland similar to how it exists today.

4. Alteration of the natural vegetative state or managed woodland will occur only to the extent necessary to achieve construction goals.

The applicant has limited their impact to the buffer by changing the design to one that appears to work with the landscape of the site better. It will require some earthwork and could pond water during rain events but overall there should be limited impact to the vegetation on the site and no new impervious surfaces in the buffer. In fact, the proposed plantings will enhance the buffer for wildlife and water quality above how it currently functions.

5. The proposal is the alternative with the least adverse impact to areas and environments under the jurisdiction of this section.

The proposed berm design appears to reduce the impact a great deal while succeeding in the goal of not increasing flow to the city's 15 inch culvert pipe under Jones Avenue. The plantings proposed should result in a net benefit for the wetland buffer.

6. Any area within the vegetated buffer strip will be returned to a natural state to the extent feasible.

The applicant is proposing an extensive planting plan to enhance the buffer on the site.

The Commission voted unanimously to recommend approval of the Wetland Conditional Use Permit to the Planning Board

Zoning Board of Adjustment

The applicant is seeking a variance from Section 10.1114.31 to allow a second driveway on a lot where only one driveway is allowed. This application will be heard at the May 17, 2022 BOA meeting. Staff will give an update on the project at the PB meeting.

Planning Department Recommendation

- 1) *Vote to grant a modification to the requirements set forth in section 10.815.30*
 - 2) *Vote to find that the application meets the requirements set forth in Section 10.814.60 of the Zoning Ordinance and to grant the Conditional Use Permit.*
 - 3) *Vote to find the application satisfies the criteria set forth in Section 10.107.50 of the Zoning Ordinance.*
 - 4) *Vote to grant the Wetland Conditional Use Permit as presented.*
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IV. PUBLIC HEARINGS – NEW BUSINESS

The Board's action in these matters has been deemed to be quasi-judicial in nature.

If any person believes any member of the Board has a conflict of interest, that issue should be raised at this point or it will be deemed waived.

- B. The request of **2422 Lafayette Road Associates, LLC (Owner)**, and Waterstone Properties Group Inc. (Applicant), for property located at **2454 Lafayette Road, Unit 9** requesting Amended Site Plan Review Approval for the alteration of the commercial pad and sidewalk, rerouting the existing sewer line, relocation of bicycle racks, and the expansion of Unit 9 from an existing footprint of 1,833 s.f. to 3,650 s.f +/- and to then divide the space into two units equaling 1,155 s.f. +/- and 2,400 s.f. +/- . Said property is shown on Assessor Map 273 Lot 3 and lies within the Gateway Corridor (G1) District. (LU-22-46)

Project Review, Decisions, and Recommendations

The proposed project will amend the commercial pad along the eastern property line of the site which was previously approved in October 2012 and constructed in 2013. The Portsmouth Green site previously received an additional Site Plan approval from the Planning Board in April 2016 for the construction of a 4-story residential building in the rear of the site and two (2) new commercial pads in the plaza's existing front parking lot. The residential building was completed in the fall of 2017. The project site received an Amended Site Plan approval from the Planning Board in December 2018 for the commercial pads near the entrance to the plaza. Construction of those commercial spaces was completed in 2020. Site Plan approval was also granted from the Planning Board in December 2021 for the demolition of the existing cinema and the construction of a 5-story residential building.

This application went before the Technical Advisory Committee Meeting on April 5, 2022. Please see below for more information.

Technical Advisory Committee (TAC)

The Committee voted to recommend approval to the Planning Board with the following stipulations:

1. Replace existing sewer manhole 2494.
2. Show location of water service on plans.
3. A trip generation memo to address the change in trips and traffic from existing to the proposed will be provided.

All the stipulations, as listed above, have been resolved in the updated submission as presented to the Planning Board.

Planning Department Recommendations

- 1) *Vote to grant amended site plan approval with the following stipulations.*

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

- 1.1** *The site plan, off-site easements to benefit the development, and any other private easements shall be recorded at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.*
- 1.2** *A general description of easement plans and deeds for which the City is a grantor or grantee shall be submitted to the City with the following information for review and approval by City Council:*
 - *Summary narrative describing the general location and purpose of the easement.*
 - *A location map identifying the general location of the easement.*
- 1.3** *The Applicant or its engineer shall submit a copy of a completed Land Use Development Tracking Form using the Pollutant Tracking and Accounting Program (PTAP) online portal currently managed by the UNH Stormwater Center or similar form approved by the City.*

Conditions Subsequent:

- 1.4** *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;*
 - 1.5** *A stormwater inspection and maintenance report shall be completed annually and copies shall be submitted to the City's Planning and Public Works Departments.*
 - 1.6** *Any easement plans and deeds for which the City is a grantor or grantee shall be recorded at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.*
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IV. PUBLIC HEARINGS – NEW BUSINESS

The Board's action in these matters has been deemed to be quasi-judicial in nature. If any person believes any member of the Board has a conflict of interest, that issue should be raised at this point or it will be deemed waived.

- C. The request of **Elizabeth B Larsen Trust of 2012 (Owner)**, for property located at **668 Middle Street** requesting Preliminary and Final Subdivision approval to subdivide 1 existing lot with 81,046 square feet of lot area, and 69.83 feet of street frontage into 3 lots as follows: Proposed Lot 1 with 18,646 square feet of lot area and no street frontage; Proposed Lot 2 with 18,756 square feet of lot area and no street frontage; Proposed Lot 3 with 43,644 square feet of lot area and 69.83 feet of street frontage. The existing buildings will remain and be on Proposed Lot 3. Said property is shown on Assessor Map 147 Lot 18 and lies within the General Residence A (GRA) and Historic Districts. (LU-21-23)
- D. The request of **Elizabeth B. Larsen Trust of 2012 (Owner)**, for property located at **668 Middle Street** requesting Site Plan Review approval for the construction of two two-unit structures and improvement to the existing structures to create a total of eight units on three lots with associated utilities, connections and site improvements. Said property is shown on Assessor Map 147 Lot 18 and lies within the Historic and General Residence A (GRA) Districts. (LU-21-23)

It is recommended that Item IV.C and IV.D be discussed together and voted on separately.

A motion is required to consider these items together.

Project Review, Decisions, and Recommendations

This application has been before the Technical Advisory Committee and the Zoning Board of Adjustment. Please see below for more information.

Technical Advisory Committee (TAC)

This project went before TAC in two stages. On September 7, 2021 the Committee voted to recommend Subdivision Approval to the Planning Board with the following stipulations:

1. In order to prevent segmentation from the Site Plan Review requirements, construction of a structure on either lot that will contain more than one dwelling unit shall require site plan approval.
2. Fee simple transfer of the exclusive use area is highly recommended in order to minimize future land use conflicts between the effected lots.
3. The sewer line shall be reconfigured and approved by DPW (prior to Planning Board approval).
4. The sewer profile shall be added to the plan set.
5. The right of way and utility easement over Chevrolet Ave (approximately 6' off the edge of pavement) shall be provided.
6. Milling and overlay of the full road width for length of the disturbance area shall be required and, the sidewalk shall be repaired or replaced (as needed and determined by the DPW).

7. Subject to DPW review and approval temporary pavement shall be required at time of construction. Such paving shall be to the existing pavement depth and, after a winter season the street shall receive a full mill and overlay.

After further planning for the development of the new lots the project team applied for Site Plan review approval in accordance with stipulation 1. Stipulations 1 through 5 have been satisfied through the Site Plan review process. Stipulations 6 and 7 have been listed as recommended conditions of Subdivision approval to the Board.

At the April 5, 2022 TAC meeting, the Committee voted to recommend approval to the Planning Board with the following stipulations:

Items to be addressed before Planning Board submittal:

1. Include easement plan in the plan set. Please identify all easements with unique identifiers corresponding to easement table listing all easements and purpose.
2. Water service material to be copper within right of way with brass curb stop.
3. Water service to existing dwelling is corrected to show 1" pipe on plan.
4. Show 1" water services to the 4 new condo units on plans.
5. Sewer service to be abandoned must be abandoned and capped outside of SMH 2395.
6. Proposed sewer manhole to be located in Chevrolet roadway outside of the driveway alignment.
7. Line showing the limited common area will be removed from the plan set and only described within the Home Owners Association and condominium documents.
8. Condominium site plan will be removed from the plan set.
9. Snow Storage should be moved so as not to conflict with the blow off hydrant.
10. Shared driveway easement documentation needs to be provided for lots 147/18 and 147/19.
11. Add drainage easement on lot 18-2 for lot 18-1.
12. Off-site easements (driveway and utility) must be signed and submitted to the City Council.
13. Mailbox must be relocated so the mail carrier can access from Chevrolet Ave.

Item to be addressed before construction:

14. Three sets of condominium documents total shall be submitted to the City for review by the Legal Department.

Stipulations 1 – 13 have been satisfied with the updated plan set provided to the Planning Board. Stipulation 14 has been listed as recommended conditions of Site Plan approval.

Board of Adjustment (BOA)

At the July 27, 2021 Board of Adjustment meeting the Board granted the following variances as presented:

- 1) A Variance from Section 10.521 to allow 114' and 100' of frontage on a private way where 100' of frontage on a formally accepted street or other road approved by the Planning Board and constructed to City subdivision standards.
- 2) A Variance from Section 10.521 to allow 69.83' of frontage on Middle Street where 100 feet is required.
- 3) A Variance from Section 10.512 to allow construction of a structure on a lot with access to a private right of way.

Planning Department Recommendations

- 1) Vote to grant preliminary and final subdivision approval with the following stipulations:**

- 1.1** *Milling and overlay of the full road width for length of the disturbance area shall be required and, the sidewalk shall be repaired or replaced (as needed and determined by the DPW).*
- 1.2** *Subject to DPW review and approval temporary pavement shall be required at time of construction. Such paving shall be to the existing pavement depth and, after a winter season the street shall receive a full mill and overlay.*
- 1.3** *Lot numbers as determined by the Assessor shall be added to the final plat.*
- 1.4** *Property monuments shall be set as required by the Department of Public Works prior to the filing of the plat.*
- 1.5** *GIS data shall be provided to the Department of Public Works in the form as required by the City.*
- 1.6** *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.*

- 2) Vote to grant Site Plan approval with the following stipulations:**

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

- 2.1** *Prior to the issuance of a building permit, three sets of condominium documents total shall be submitted to the City for review by the Legal Department.*
- 2.2** *The site plan, off-site easements to benefit the development, and any other private easements shall be recorded at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.*
- 2.3** *A general description of easement plans and deeds for which the City is a grantor or grantee shall be submitted to the City with the following information for review and approval by City Council:*
 - *Summary narrative describing the general location and purpose of the easement.*
 - *A location map identifying the general location of the easement.*

2.4 *The Applicant or its engineer shall submit a copy of a completed Land Use Development Tracking Form using the Pollutant Tracking and Accounting Program (PTAP) online portal currently managed by the UNH Stormwater Center or similar form approved by the City.*

Conditions Subsequent:

2.5 *Any easement plans and deeds for which the City is a grantor or grantee shall be recorded at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.*

2.6 *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;*

2.7 *A stormwater inspection and maintenance report shall be completed annually and copies shall be submitted to the City's Planning and Public Works Departments.*

IV. PUBLIC HEARINGS – NEW BUSINESS

The Board's action in these matters has been deemed to be quasi-judicial in nature.

If any person believes any member of the Board has a conflict of interest, that issue should be raised at this point or it will be deemed waived.

- E. The request of **4 Amigos LLC (Owner)**, for property located at **1400 Lafayette Road** and **951 Peverly Hill Road** requesting Preliminary and Final Subdivision approval to subdivide one existing lot with 223,416 square feet of lot area and 789.91 feet of frontage on Peverly Hill Road and 576.28 feet of frontage on Lafayette Road into two lots as follows: Proposed Lot 1 with 111,415 square feet of lot area and 467.63 feet of frontage on Peverly Hill Road, Proposed Lot 2 with 137,276 square feet of lot area with 325.59 feet of frontage on Peverly Hill Road and 576.28 feet of frontage on Lafayette Rd. Said property is located on Assessor Map 252 Lot 7 and lies within the Gateway Center (G2) District. (LU-22-80)
- F. The request of **4 Amigos LLC (Owner)**, for property located at **1400 Lafayette Road** and **951 Peverly Hill Road** requesting an amendment and a 1-year extension for the previously approved Site Plan and Conditional Use Permit for a Development Site according to the requirements of Section 10.5B40 of the Zoning Ordinance and Site Plan Review approval for the construction of a 53-unit Garden and Townhouse Style residential development consisting of 6 structures with a combined total footprint of 37,775 +/- s.f. and 122,000 +/- GFA with associated grading, lighting, utilities, stormwater management, landscape improvements and community space. Said property is located on Assessor Map 252 Lots 4, 5, and 7 and lies within the Gateway Center (G2) District. (LU-20-12)

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

A motion is required to consider these items together.

Project Review, Decisions, and Recommendations

The requested Site Plan and Conditional Use Permit (CUP) approval extension was originally granted at the [April 30, 2020 Planning Board meeting](#). An extension of these approvals were granted in April of 2021 and the application is now before the Planning Board for a second extension with amendments (Please reference Section 2.14 Approval Expiration and Extension of the [Site Plan Review Regulations](#)). For convenience, the original Letter of Decision and 1-Year Extension Request Letter of Decision have been included in the May 19, 2022 Planning Board meeting packet.

The project team is also seeking Subdivision Approval. This application is running concurrently with the request for Site Plan and CUP extension with amendments. Both requests have been review by the Technical Advisory Committee. Please see below for more details.

Site Plan and CUP Extension and Amendment Review – Technical Advisory Committee (TAC)

At the Technical Advisory Committee meeting on May 3, 2022, the Committee voted to recommend approval to the Planning Board for the Site Plan and CUP extension and amendment request with the following stipulations:

Items to be addressed prior to Planning Board approval:

1. The crossing at West Road will be included as it was part of the original approval.
2. A note to the plan will be added for any dead ended water services to include either a fire hydrant or a flushing hydrant.
3. Domestic water service will be changes to come directly from water main and not from the fire service.
4. Each condo will have individual water services, shutoffs, and meters.
5. Leak detection and access easement to the city -from the original approval will still be applicable.
6. SMH3 will be changed to a 5' manhole to accommodate the inside drop.
7. Applicant will request a waiver from the Planning Board for Section 9.3 of the Site Plan regulations to have the dumpsters located within 20' of lot line.
8. 7 Bike racks will be added adjacent to the southern patio area between buildings C and E.
9. Textured area between buildings E and D will be removed.
10. All easements will be identified with unique identifiers and corresponding easement table that lists all easements and their purpose.

Prior to Building Permit Issuance:

11. The sprinkler and riser room will be included in the building plans and will be incorporated within the existing footprint.

Conditions 1-10 have been satisfied in the updated plan that has been provided to the Planning Board. Condition 11 has been listed as a recommended condition of approval.

Subdivision Review – Technical Advisory Committee (TAC)

At the Technical Advisory Committee meeting on May 3, 2022, the Committee voted to recommend Subdivision approval to the Planning Board with the following stipulation:

Items to be addressed prior to Planning Board approval:

1. A sewer easement to the benefit of proposed Lot 5 will be granted across Lot 7.

Condition 1 has been satisfied with the updated plan as provided to the Planning Board.

Planning Department Recommendations

- 1) Vote to grant Preliminary and Final Subdivision approval with the following stipulations.***

- 1.1. Lot numbers as determined by the Assessor shall be added to the final plat.***

- 1.2 Property monuments shall be set as required by the Department of Public Works prior to the filing of the plat.*
- 1.3 GIS data shall be provided to the Department of Public Works in the form as required by the City.*
- 1.4 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.*
- 2) Vote to grant waiver to section 9.3.5 of the Zoning Ordinance to allow dumpster to be located within 20 feet of the property line.*
- 3) Vote to grant a 1-year extension of the Site Plan and Conditional Use Permit approval with presented amendments and all original conditions (as approved on April 30, 2020 under LU-20-12) in addition to the following stipulations:*

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

- 3.1 The sprinkler and riser room will be included in the building plans and will be incorporated within the existing footprint.*
- 3.2 The site plan, off-site easements to benefit the development, and any other private easements shall be recorded at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.*
- 3.3 A general description of easement plans and deeds for which the City is a grantor or grantee shall be submitted to the City with the following information for review and approval by City Council:*
 - Summary narrative describing the general location and purpose of the easement.*
 - A location map identifying the general location of the easement.*
- 3.4 Summary narrative describing the general location and purpose of the easement.*
- 3.5 A location map identifying the general location of the easement.*
- 3.6 The Applicant or its engineer shall submit a copy of a completed Land Use Development Tracking Form using the Pollutant Tracking and Accounting Program (PTAP) online portal currently managed by the UNH Stormwater Center or similar form approved by the City.*

Conditions Subsequent:

- 3.7 Any easement plans and deeds for which the City is a grantor or grantee shall be recorded at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.*
- 3.8 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;*

3.9 *A stormwater inspection and maintenance report shall be completed annually and copies shall be submitted to the City's Planning and Public Works Departments.*

V. DESIGN REVIEW – PUBLIC HEARING

- A. The request of **EightKPH LLC (Owner)**, for property located at **161 Deer Street to be known as 88 Maplewood Avenue** requesting Design Review for the demolition of the existing one story commercial building and the construction of a four story building with a pent house. Said property is shown on Assessor Map Lot and lies within the Character District 5 (CD5). (LUPD-22-7)

State Regulatory Context

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.

Site Plan Regulations

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 provided the project application is submitted within 12 months.

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 April 21, 2022 meeting, the Planning Board determined that the applicant had provided sufficient information and accepted the request for Design Review and set the public hearing.

Site Plan Review Regulations – Article 2, Section 2.4.3: Design Review Phase

- 1. The applicant may request to meet with the Board for nonbinding discussions of a potential application that involve more specific design and engineering details than in the preliminary conceptual consultation phase.*
- 2. A request for design review accompanied by all plans and exhibits shall be submitted to the Planning Department at least 14 days prior to the date of a scheduled meeting of the Board via the City’s online permitting system as well as in hard copy. The total number of hard copies required shall be determined by the Planning Director.*
- 3. The request for design review shall include enough of the information listed in Section 2.5.3(1) and plans displaying enough of the information listed in Section 2.5.4(3) so that the Board is able to review the project. Detailed engineering of infrastructure and utilities are not required at the design review phase, but the information listed in Section*

2.5.4(3) should be displayed in sufficient detail to enable the Board to understand the proposed project and identify potential issues and concerns.

4. At a regular meeting of the Planning Board, the Board shall determine if the request for design review includes sufficient information to allow the Board Site Plan Review Regulations 6 November 2020 to understand the project and identify potential issues and concerns, and shall vote on whether to accept the request for design review and to schedule a public hearing. If the Board determines that the request does not describe the proposed project in sufficient detail, it shall notify the applicant of the specific deficiencies that need to be addressed.

5. Design review discussions shall take place in a public hearing at a regularly scheduled meeting of the Planning Board, after notice to abutters, holders of conservation, preservation, or agricultural preservation restrictions, and the general public as required by State statute.

6. At any public meeting of the Planning Board, the Board may determine that the design review process of an application has ended and shall inform the applicant in writing within 10 days of such determination.

Planning Department Recommendations

Planning Board should review relevant sections of the Zoning Ordinance and Site Plan Review Regulations with the applicant.

At the closure of discussion, vote to find the design review process is complete.

VI. CITY COUNCIL REFERRALS – PUBLIC HEARING

A. Hold a Public Hearing and consider a recommendation to the City Council for Zoning Ordinance Amendments to Building Height standards.

On February 7, 2022, the City Council established the Land Use Committee to look at diversifying land use regulations within the City. As part of the first package of amendments, the Land Use Committee has focused on advancing the citywide housing goals identified by City Council in their 2022-2023 Goals. These objectives were refined on February 27, 2022 and include:

1. Increase diversity of housing types and price points;
2. Remove regulatory barriers for housing diversification in neighborhoods (ADUS) – context sensitive design and consideration to impacts to traffic, on street parking and other infrastructure impacts;
3. Restructure incentives to deliver greater public benefit in workforce housing construction; and
4. Identify and maximize partnerships, coalitions, and funding opportunities to deliver affordable housing.

Regulatory Amendment Work Plan

On April 9, 2022, the Land Use Committee approved transmittal of the draft 2021 Regulatory Amendment Work Plan to City Council. The work plan consists of three phases:

1. **Phase 1: Code Clean-Up – Building Height Standards.**
Purpose: Improve regulatory implementation and align with legislative intent. Eliminate ambiguous sections that result in unintended consequences.
2. **Phase 2: Accessory Dwelling Unit Amendments**
Purpose: Remove barriers and expand the number of eligible properties for ADUs and Senior Housing Facilities.
3. **Phase 3: Incentive Amendments**
Purpose: Adjust incentives to place a higher emphasis on Workforce Housing.

Phase 1 Amendments Recommendation

On April 18, 2022, the City Council approved the work plan and transmitted proposed Phase 1 amendments to the Planning Board for review and a recommendation (**Attachment A**). On May 05, 2022 the Planning Board held a work session to review proposed Phase 1 amendments. At that time, staff presented a revised document that was developed in consultation with the City Attorney's office. The revised document, provided in **Attachment B**, included formatting corrections and language improvements that provided for more clear and consistent interpretation. At the May 5th work session, the Planning Board also requested revisions. Those revisions are more fully summarized in **Attachment C – Issues Matrix**. A final recommended set of amendments, that reflect issues raised by the Planning Board, is provided as **Attachment D**. Please note, Planning Staff are still evaluating a modification, if needed, to the definition of *existing grade plane* in order to deal with situation where a reduction in the existing grade is proposed. If needed, staff will present a modified definition at the Public Hearing on May 19th.

Planning Department Recommendation

Vote to recommend approval to amendments to the Zoning Ordinance as provided in Attachment D.

VI. CITY COUNCIL REFERRAL

- B. Consider a recommendation to City Council for an application from **Sherilyn Burnett Young of Rath Young, and Pignatelli on behalf of the applicant Margot Thompson** and Edward Thompson to request that the Portsmouth City Council apply for an Urbanized Shoreland Exemption pursuant to RSA 483-B:12 for the property located at **57 Salter Street**, Tax Map 102, Lot 32 in the City of Portsmouth, located along the shores of the Piscataqua River.

Background

On April 25, 2022, Mayor Deaglan McEachern received a request from Sherilyn Burnett Young on behalf of the applicants Margot Thompson and Edward Thompson to request that the Portsmouth City Council apply for an Urbanized Shoreland Exemption pursuant to RSA 483-B:12 for the property located at 57 Salter Street. If granted, this would exempt the Property from the provisions of the Shoreland Water Quality Protection Act. The City applied for and was granted such an Exemption once before, in 2007, for Tax Parcel 106, Lot 54 at 99 Bow Street.

On May 2, 2022, the City Council requested that the item be placed on an agenda of the Planning Board for a report back and recommendation.

The Property in question, 57 Salter Street, is the site of a structure that has a portion located over water. This Property has been renovated. In order to complete the renovation, the property had to be in compliance with and get appropriate permits for compliance with the State Wetland regulations under RSA 482-A (Fill and Dredge in Wetlands) and RSA 483-B (Shoreland Water Quality Protection Act). The State issued an administrative order, finding that the Property has been converted to a residential structure over the water which is prohibited under RSA 482-A and violated set back requirements under 483-B. The Thompsons have appealed the administrative order and have agreed to move the property back if the State grants the shoreline exemption. However, as individuals, they may not apply for a Urbanized Shoreland Exemption. The Thompsons have asked the City to apply for this Urbanized Shoreland Exemption and if approved by the State, the property will be exempt from the requirements of RSA 483-B. The specifics of that exemption are listed below.

NH RSA 483-B: 12 Shoreland Exemptions.

- I. The governing body of a municipality may, in its discretion, request the commissioner to exempt all or a portion of the protected shoreland within its boundaries from the provisions of this chapter if the governing body finds that special local urbanization conditions as defined in RSA 483-B: 4, XXV, exist in the protected shoreland for which the exemption is sought.*
- II. If the governing body of a municipality requests such an exemption, it shall submit evidence of existing and historical patterns of building and development in the protected shoreland in demonstration of the special local urbanization conditions. Such evidence shall address:*
 - (a) Current and past building density.*
 - (b) Commercial, industrial, or residential uses.*
 - (c) Municipal or other public utilities.*
 - (d) Current municipal land use regulations which affect the protected shoreland.*
 - (e) Designation as a downtown, community center, central business district, or urbanize area or urban cluster as delineated by the United States Census Bureau.*

- (f) Any other information which the commissioner may reasonably require.
- III. With the advice of the office of energy and planning, the commissioner shall approve or deny the request for an exemption and shall issue written findings in support of his decision. A request for an exemption shall be approved only if the municipality demonstrates, using the evidence required under paragraph II, that special conditions of urbanization exist along the portion of shoreland to be exempted.
- IV. The Pease development authority, division of ports and harbors may request an exemption under this section for all or a portion of any land purchased, leased, or otherwise acquired by it pursuant to RSA 12-G:39.

RSA 483-B: 4, XXV defines urbanization with the following:

"Urbanization" means the concentrated development found in the sections of towns or cities where there has been an historic pattern of intensive building for residential, commercial, industrial, or mixed uses such that it contributes to or constitutes the municipality's downtown, community center, or central business district and wherein all vegetative buffers have been depleted, impervious surfaces are in excess of 50 percent, and residential uses are of at least 10 dwelling units per acre.

Project Review, Decisions, and Recommendations

Historic District Commission approvals were received for all work associated with the residential conversion.

Planning Department Recommendation

Deliberations should include consideration of the criteria for urbanization identified in RSA 483-B: 4, XXV (above).

Consider a recommendations to the Portsmouth City Council on the application for an Urbanized Shoreland Exemption pursuant to RSA 483-B:12 for the property located at 57 Salter Street, Tax Map 102, Lot 32 in the City of Portsmouth, located along the shores of the Piscataqua River.

VII. OTHER BUSINESS

VIII. ADJOURNMENT