



City of Portsmouth
Planning Department
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Memorandum

To: Planning Board
From: Beverly Mesa-Zendt, Planning Director
Stefanie L. Casella, Planner
Date: September 9, 2022
Re: Recommendations for the September 15, 2022 Planning Board Meeting

I. SUMMARY OF LEGISLATIVE CHANGES ENACTED THROUGH HB1661 AND THE IMPACT TO LAND USE BOARDS

In the fall of 2019, the Governor's Housing Task Force published a set of recommended legislative changes to address the housing shortage including additional training and tools for communities. Many of these legislative changes were attached through HB 1661 and became law. House Bill 1661 is an omnibus bill which contains new provisions that will encourage affordable housing and require land use boards to improve transparency and speed up the local approval process.

In July 2022, the New Hampshire Municipal Association and the New Hampshire Office of Planning and Development at the Department of Business and Economic Affairs published *Changes to Planning & Zoning Laws in 2022: A Guide for Municipalities* to assist local governments in understanding the new legislation. This guide can be found at <https://www.nh.gov/osi/resource-library/legislation/documents/opd-nh-ma-hb-1661-1021-advisory.pdf>

The City of Portsmouth Legal Department will provide a brief overview of the legislative changes impacting land use boards and the new procedural requirements the city will be adopting to ensure compliance with the new requirements.

II. APPROVAL OF MINUTES

A. Approval of the August 18, 2022 Meeting Minutes

Planning Department Recommendation

1) Board members should determine if the draft minutes include all relevant details for the decision making process that occurred at the August 18, 2022 meeting and vote to approve meeting minutes with edits if needed.

III. DETERMINATION OF COMPLETENESS

SUBDIVISION REVIEW

- A. The request of **Hemlock Way Realty Investments, LLC (Owner)**, for property located at **0 Patricia Drive** requesting Preliminary and Final Subdivision approval to subdivide one (1) existing lot into two (2) lots.

Planning Department Recommendations

1) Vote to determine that this application is complete according to the Subdivision Regulations, (contingent on the granting of any required waivers) and to accept the applications for consideration.

SITE PLAN REVIEW

- A. The request of **Bromley Portsmouth, LLC (Owner)**, for property located at **1465 Woodbury Avenue** requesting Amended Site plan Review Approval for the demolition of the existing structure, parking, and utility infrastructure.

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 Sections III and IV of the agenda) and to accept the application for consideration.

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. APPLICATION WITHDRAWN The request of **Coventry Realty, LLC (Owner)**, for property located at **111 State Street** requesting a Conditional Use Permit approval in accordance with section 10.1112.14 of the Zoning Ordinance to allow zero (0) parking spaces where 1.3 are required. Said property is located on Assessor Map 107 Lot 50 and lies within the Character District 4 (CD4) and the Historic District. (LU-22-125) **APPLICATION WITHDRAWN**

Planning Department Recommendation

The Request has been withdrawn by the applicant, no action is required by the Board

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 **Hemlock Way Realty Investments, LLC (Owner)**, for property located at **0 Patricia Drive** requesting preliminary and final subdivision approval to subdivide a lot with an area of 137,549 s.f. and 414 ft. 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 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. (LU-22-172)

Project Background

The Planning Board, at its regularly scheduled meeting February 18, 2021, considered this application for Preliminary and Final Subdivision approval for a two-lot subdivision located on a private road currently known as Patricia Drive. Subsequent to the Planning Board approval the following actions were taken:

- On March 15, 2022, the City Council voted to approve the conveyance by release deed of ownership of 7,860 square feet of roadway - as shown on the Plan labeled "Proposed Subdivision Plan: Tax Map 283 Lot 11 dated February 10, 2021", ("Roadway") and to approve renaming the private road to Hemlock Way.
- On August 18, 2021, the Planning Director granted a six month extension to the subdivision.
- On July 21, 2022, the Planning Board granted an additional extension.
- On July 21, 2022, the Planning Board granted a Wetland Conditional Use Permit to replace an existing unfinished right-of-way with a new private road to access two lots as well as the installation of stormwater treatment infrastructure and wetland buffer plantings which will result in 1,738 square feet of temporary impact and 4,283 square feet of permanent impact to the wetland buffer.
- On August 18, 2022, the subdivision approval expired.

The applicant a requesting preliminary and final subdivision approval and a waiver to the Residential Street Requirements provided in the Subdivision Rules and Regulations.

Private Road Patricia Drive/Hemlock and City

1. The private road "Hemlock", although dedicated by plat, was never accepted by the City and, in accordance with RSA 231:51 and per case law, it now reverts back to abutting property owners. By way of

background, dedications of paper streets made before 1893 are perpetual. Dedications made between 1893 and 1969 terminate automatically if not accepted within 20 years. The private road "Hemlock" was dedicated in 1965 and was not accepted by the City within 20 years of the dedication. Because the City did not accept "Hemlock" within 20 years of dedication, the dedication automatically terminates and ownership reverts to underlying lot owners, the abutters. This is correctly reflected on the plat.

2. Staff, in consultation with the City Attorney's office, has determined that the area previously depicted as a private drive should now be reflected as an easement area by operation of law. The subdivision plan before the Planning Board, and subject to this extension request, accurately reflects the boundaries established by operation of law. The "private drive", while still reflected on the plat, represents an easement area consistent with the access requirements vested to all lots that were served by the now extinguished "paper street".
3. Access via the Patricia Drive is preserved for pursuant to *Duchesnaye v. Silva*, 118 N.H. 728 (1978), holding that the owners of lots abutting a former paper street retain an implied easement to pass over and develop the area for access.
4. The city will notice abutters of the City's intent to release the 7,860 square feet of roadway - shown on the Plan labeled "Proposed Subdivision Plan: Tax Map 283 Lot 11 dated February 10, 2021", ("Roadway"). The City will ascertain abutters' interest in receiving undivided interest prior to executing the release deed. The City will reserve rights for drainage maintenance and public access on that portion of the road to be conveyed.

Project Review Discussion and Recommendations

The application has been before the Technical Advisory Committee. See below for details.

Technical Advisory Committee Review

This application was considered at the September 6, 2022 TAC meeting. At this meeting the committee voted to recommend approval to the Planning Board with the following stipulation:

Prior to Planning Board Consideration:

- 1) Applicant will provide a letter addressing how previous stipulations as identified in the Planning Board letters of approval have been satisfied.

The applicant has provided a letter summarizing how previous stipulations have been satisfied. This letter has been provided in the Planning Board materials.

Planning Department Recommendation

1) Vote to grant waiver to the Residential Street Minimum Standards to allow 18 feet of pavement width where 32 is required.

2) Vote to grant Preliminary and Final Subdivision approval with the following stipulations:

2.1) That a release deed retaining public access and drainage rights to the City, be prepared for review and approval by the City Attorney.

2.2) The final plat and all easement plans and deeds, including the aforementioned private easement shall be recorded concurrently at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.

2.3) GIS data shall be provided to the Department of Public Works in the form as required by the City.

2.4) Associated recording fees shall be paid to the City prior to recordation. Any changes to the plan subsequent to approval must be identified in a letter and submitted to the city with the recordable plans.

2.5) Any site development (new or redevelopment) resulting in 15,000 square feet or greater ground disturbance will require the submittal of a Land Use Development Tracking Form through the Pollutant Tracking and Accounting Program (PTAP) online portal. For more information visit <https://www.cityofportsmouth.com/publicworks/stormwater/ptap>

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 **Blus O’Leary Family Living Trust (Owner)**, for property located at **225 Wibird Street** requesting Conditional Use Permit Approval as permitted under Section 10814.40 of the Zoning Ordinance to construct an attached Accessory Dwelling Unit. Said property is located on Assessor Map 133 Lot 54 and located within the General Residence A (GRA) district. (LU-22-174)

Project Background

The applicant is proposing to build a single story two bedroom 750 SF Attached Accessory Dwelling Unit (AADU). This will include the construction of a handicap accessible connecting addition onto the back of the existing home. The main entry to the AADU will be through the new connector which will include an open handicap accessible lift. Rear entry to the principal dwelling unit will also be through the new connector.

Project Review Discussion and Recommendations

City staff have provided an analysis of the proposed ADU. See below for more details.

Staff Review

Attached accessory dwelling units must comply with standards set forth in the following sections of the Zoning Ordinance:

- 10.814.10
- 10.814.20
- 10.814.30
- 10.814.40

In granting a conditional use permit for an accessory dwelling unit, the Planning Board may modify a specific standard set forth in Sections 10.814.40 (below) 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.

Required Standards (10.814.40)	Meets Standard	Does Not Meet Standard	Comments
10.814.41 An interior door shall be provided between the principal dwelling unit and the accessory dwelling unit.	√		Door provided in the connector shared space area.

Required Standards (10.814.40)	Meets Standard	Does Not Meet Standard	Comments
10.814.42 The accessory dwelling unit shall not have more than two bedrooms and shall not be larger than 750 sq. ft. gross floor area. For the purpose of this provision, gross floor area shall not include existing storage space, shared entries, or other spaces not exclusive to the accessory dwelling unit	√		Two bedrooms are proposed. The proposed unit is 750 square feet.
10.814.43 Any exterior changes to the single-family dwelling shall maintain the appearance of a single-family dwelling. If there are two or more doors in the front of the dwelling, one door shall be designed as the principal entrance and the other doors shall be designed to appear to be secondary.	√		AADU is located to the rear of the principal structure on Wibird. AADU presents as single family dwelling from the primary entrance on Wibird Street, the existing structure is on a corner lot – the view of the AADU from Hawthorn is more discernable as a separate unit but not inconsistent with the extended single family residential forms seen in the neighborhood.
10.814.44 No portion of the AADU shall be closer to the front lot line than the existing front wall of the principal dwelling unit.	√		AADU is located to the rear of the principal structure and is no closer to the side yard than the principal structure.
10.814.451 An exterior wall of the AADU that faces a street on which the lot has frontage shall comprise no more than 40 percent of the total visible façade area of the dwelling as seen from that street.	√		The exterior wall of the AADU that faces Hawthorn street is 21% of the total visible façade; with the connector space included the AADU is 33%. See attached exhibits.
10.814.452 The addition to or expansion of the existing single-family dwelling may include an increase in building height only as an upward expansion of the existing principal building with no increase in building footprint.	√		The AADU is proposed as a single story.
10.814.453 The building height of any addition or expansion that includes an increase in building footprint shall be less than the building height of the existing principal building.	√		The AADU is proposed as a single story.

Required Standards (10.814.40)	Meets Standard	Does Not Meet Standard	Comments
<p>10.814.454 The AADU shall be architecturally consistent with the existing principal dwelling through the use of similar materials, detailing, roof pitch, and other building design elements.</p>	<p>√</p>		<p>The applicant has provided the following details regarding the architecture of the AADU:</p> <ul style="list-style-type: none"> • Clapboard siding to be 4” to match existing. • New window style to match or coordinate with existing historic double hung windows. • New trim and overhangs to match original trim detailing under the existing vinyl and aluminum sheathing. • New roofing material to be architectural grade asphalt roofing shingles to match existing. • Applicant proposes a gabled roof for the AADU and the shared connector space consistent with the principal structure. • Roof pitch for AADU is similar to principal structure: Principal Structure-11:12 AADU 9:12

Planning Department Recommendation

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

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

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

A motion is required to consider these items together.

- D.** The request of **Bromley Portsmouth, LLC (Owner)**, for property located at **1465 Woodbury Avenue** requesting a Wetland Conditional Use Permit under section 10.1017 of the Zoning Ordinance for the demolition of the existing structure, parking, and utility infrastructure to be replaced with lawn and erosion control measures to result in 4,760 square feet of disturbance in the wetland buffer area. Said property is shown on Assessor Map 216 Lot 3 and lies within the Gateway Corridor (G1) District. (LU-22-149)

- E.** The request of **Bromley Portsmouth, LLC (Owner)**, for property located at **1465 Woodbury Avenue** requesting Amended Site plan Review Approval for the demolition of the existing structure, parking, and utility infrastructure to be replaced with lawn and will incorporate erosion control measures. Said property is shown on Assessor Map 216 Lot 3 and lies within the Gateway Corridor (G1) District. (LU-22-149)

Project Background

The applicant is proposing the demolition of existing former schoolhouse restaurant building, parking and associated utilities and replaced with lawn area. The demolition of the existing structure, parking, and utility infrastructure will result in 4,760 square feet of disturbance in the wetland buffer area. While this project is exempt from site plan review under *Section 1.2.2 Exemption of Small Projects* in the Site Plan Review Regulations, the Planning Director has brought the amended site plan for approval under the Section 2.15.1 of the Site Plan Review Regulations which provides the following:

After approval of the site plan the owner may request, in writing, approval of minor amendments. The Planning Director may approve the amendment in writing or may require review by the TAC or the Planning Board.

Prior to demolition, the proposal will be reviewed by the Demolition Committee in accordance with the City’s Demolition Ordinance.

https://files.cityofportsmouth.com/files/planning/demolition/demoordinance_111918.pdf

Project Review Discussion and Recommendations

This application has been before the Conservation Commission. See below for more details.

Conservation Commission

The Conservation Commission reviewed the application at the August 10, 2022 meeting. See below for the Staff 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.
Applicant is proposing to remove existing impervious surfaces and buildings in and around the 100' buffer and will replace with pervious cover.

- 2.** There is no alternative location outside the wetland buffer that is feasible and reasonable for the proposed use, activity or alteration.
Applicant is proposing an overall net positive impact to the wetland buffer by removing existing impervious coverage of the buffer and replacing with pervious coverage.

- 3.** There will be no adverse impact on the wetland functional values of the site or surrounding properties.
While current impervious impacts are proposed to be replaced with pervious material, there is currently no evaluation of the wetland functions and values. However, overall the removal of impervious to be replaced with lawn should result in a net benefit. With the addition of buffer plantings including trees and/or shrubs, the site would be further enhanced. Additionally, the applicant should assure that stormwater will be contained on site.

- 4.** Alteration of the natural vegetative state or managed woodland will occur only to the extent necessary to achieve construction goals.
Currently no natural vegetative state on the site plan that could be altered or disturbed. The buffer will be restored to lawn.

- 5.** The proposal is the alternative with the least adverse impact to areas and environments under the jurisdiction of this section.
Applicant's plans show they are planning to remove all existing impervious surface on the site and will replace with pervious area. This should aid in stormwater and runoff control and if the proper plantings are used, will help restore a section of the wetland buffer.

- 6.** Any area within the vegetated buffer strip will be returned to a natural state to the extent feasible.
Site plan appears to show no demolition and/or construction

activity within the 25' buffer.

After consideration the Conservation Commission voted unanimously to approve the proposed project with the following stipulations:

- 1) Applicant comply with NOFA (Northeast Organic Farming Association) standards for organic land care when maintaining proposed new pervious area.
- 2) Applicant ensure that no snow will be stored within this section of overall lot as it drains to wetland and could carry excess nutrients and chemicals into the watershed. This should also include signage around the proposed lawn area which will indicate that no snow storage shall be placed there.

The above stipulations have been corrected and satisfied in the updated plan as provided to the Planning Board.

Planning Department Recommendation

- 1) *Vote to find that the application meets the criteria set forth in 10.1017.50 and to grant the Wetland Conditional Use Permit as presented.*
 - 2) *Vote to grant Amended Site Plan approval as presented.*
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V. OTHER BUSINESS

A. Presentation on the Parking Supply and Demand Analysis Study.

The City of Portsmouth will be seeking proposals from qualified consulting firms to study the supply and demand for parking in downtown Portsmouth. The study will assess and identify current and alternative approaches to ensuring an adequate parking supply, inform future public investments, and guide policy choices and zoning updates, including strategies that:

- Optimize utilization of public parking facilities and pricing structure;
- Cultivate mode shift and mitigate induced parking demand where possible, and;
- Make effective use of available and future technology.

Benjamin Fletcher, Director of Parking will provide an overview of the recently developed Request for Proposals and the timeline for completing the Parking Supply and Demand Analysis Study.

B. Chairman's Updates and Discussion Items

VI. ADJOURNMENT
