



City of Portsmouth
Planning Department
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Portsmouth, NH
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Memorandum

To: Planning Board
From: Peter Stith, Planning Manager
Date: June 15, 2023
Re: Recommendations for the June 15, 2023 Planning Board Meeting

I. APPROVAL OF MINUTES

A. Approval of the May 18, 2023 and May 25, 2023 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 May 18, 2023 regular meeting and May 25, 2023 work session and vote to approve meeting minutes with edits if needed.

II. 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 **Eversource Energy (Applicant)** and **Public Service of New Hampshire (Owner)**, for properties located off **Gosling Road, Greenland Road, Borthwick Avenue** and **Ocean Road** requesting a proposed Wetland Conditional Use Permit under Section 10.1017 for a utility structure replacement project involving the replacement of wooden utility poles with steel poles and associated equipment. This work would be throughout the Portsmouth transmission corridor between Gosling Road to Echo Avenue and between Borthwick Avenue and the Ocean Road Substation. In total, the proposed project requires approximately 208,734 sq. ft. of temporary wetland impact for the placement of timber matting and structure replacements. There will be approximately 3,310 sq. ft. of temporary impact to Pickering Brook in order to span the stream with timber matting. The project also proposes 78,642 sq. ft. of temporary buffer impact in uplands for clearing and grading to gain access to structures. Said properties are located on Assessor Map 238 Lots 2, 3 and 20, Map 239 Lots 7-1, 8, 13-2, 16 and 18, Map 240 Lots 2-1, and 3, Map 258 Lot 54, Map 259 Lot 12 and lies within the Gateway-1 (G1), Waterfront Industrial (WI), Office Research (OR), Industrial (I), and Rural (R) Districts. (LU-23-60)

Project Background

The applicant was granted a Wetland CUP on December 30, 2021 for replacement of 8 utility poles within their easement area. They are proposing to replace additional wooden poles with steel structures throughout their easement area from Gosling Road to Ocean Road. This is a utility structure replacement project with work throughout the Portsmouth transmission corridor between Gosling Road to Echo Avenue and between Borthwick Avenue and the Ocean Road Substation. The Site crosses through residential, industrial and commercial properties, as well as wooded areas and wetlands. Work in the right of way is proposed in palustrine (marsh) scrub-shrub and palustrine emergent wetland systems, including the Great Bog. Additionally, there will be temporary impacts to the Pickering Brook tributary and within the 100-foot wetland buffer. In total, the proposed project requires approximately 208,734 sq. ft. of temporary wetland impact for the placement of timber matting and structure replacements. There will be approximately 3,310 sq. ft. of temporary impact to Pickering Brook in order to span the stream with timber matting. The project also proposes 78,642 sq. ft. of temporary buffer impact in uplands for clearing and grading to gain access to structures.

Project Review, Discussion, and Recommendations

The project has been before the Conservation Commission. See below for details.

Conservation Commission

The Conservation Commission, at its regularly scheduled meeting of Wednesday, April 12, 2023, considered the application and voted to recommend approval of the Wetland Conditional Use Permit to the Planning Board as presented with no conditions.

Staff Analysis

According to Article 10 Section 10.1017.60 the applicant must satisfy the following conditions for approval of this utility project.

1. The proposed project is in the public interest.

The project is necessary maintain existing corridor powerlines with upgraded support poles.

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 state.

The applicant has stated that the work will be conducted in accordance with NHDES Best Management Practices Manual for Utilities in and Adjacent to Wetlands and Waterbodies (NH DNCR 2019). Prior to placement of timber mats the applicant has stated they will inspect the mats to ensure cleanliness and will clean them off with each reuse. Wooden timber matting will be used to minimize the disturbance of wetlands and sensitive areas and once removed, the areas will be restored and stabilized with seed and mulch. Any areas of soil disturbance will be stabilized with seed and straw mulch. Additional proposed BMPs include silt fences, straw wattles/bales, and the use of water bars.

3. No alternative feasible route exists which does not cross or alter a wetland or have a less detrimental impact on a wetland.

The applicant has chosen the only routes available to access the replacement poles, but the applicant has selected access designed to utilize existing historical access routes where possible to minimize impacts.

4. Alterations of natural vegetation or managed woodland will occur only to the extent necessary to achieve construction goals.

Generally, the vegetation is expected to return to its original configuration after the timber mats are removed. After removal, if erosion has occurred the areas will be restored with seed and mulch. However, there will be some vegetation removed exactly where the structure replacement is proposed to occur.

Planning Department Recommendation

Wetland Conditional Use Permit

1) *Vote to find that the Conditional Use Permit application meets the criteria set forth in Section 10.1017.60 and to adopt the findings of fact as presented.*

(Alt.) Vote to find that the Conditional Use Permit application meets the criteria set forth in Section 10.1017.60 and to adopt the findings of fact as amended and read into the record.

2) *Vote to grant the Wetland Conditional Use permit as presented.*

(Alt.) Vote to grant the Wetland Conditional Use permit with the following conditions:

II. 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 **Mojo's West End Tavern (Applicant)**, for property located at **95 Brewery Lane** requesting a Conditional Use Permit in accordance with Section 10.440, Use 19.50 for an outdoor dining and drinking area as an accessory use. Said property is located on Assessor Map 146 Lot 27 and lies within the Character District 4-W (CD-4W) and Character District 4-L2 (CD4-L-2) (LU-23-75)

Project Background

The applicant is proposing to have permanent outdoor dining and drinking area off the rear of the existing restaurant. During the Covid-19 emergency, restaurants were able to have outdoor dining areas and Mojo's utilized part of the travel aisle in the rear parking lot for outdoor dining. An outdoor dining and drinking use is an accessory use and requires a CUP in the CD4-W district. The proposal includes converting an existing landscaped area into a fenced in pervious patio area that will accommodate outdoor seating for patrons. The applicant has submitted a request for minor site plan amendment to the Planning Director, which is contingent on receiving approval for the CUP. The use does not trigger the need for additional off-street parking as it is accessory and will be seasonal. This approval would be subject to any other Health or Inspections Department permits and/or review through a separate permitting process.



Planning Department Recommendation

Outdoor Dining Conditional Use Permit

1) *Vote to find that the Conditional Use Permit application meets the criteria set forth in Section 10.243.20 and to adopt the findings of fact as presented.*

(Alt.) Vote to find that the Conditional Use Permit application meets the criteria set forth in Section 10.243.20 and to adopt the findings of fact as amended and read into the record.

2) *Vote to approve the conditional use permit as presented.*

II. PUBLIC HEARINGS – NEW BUSINESS

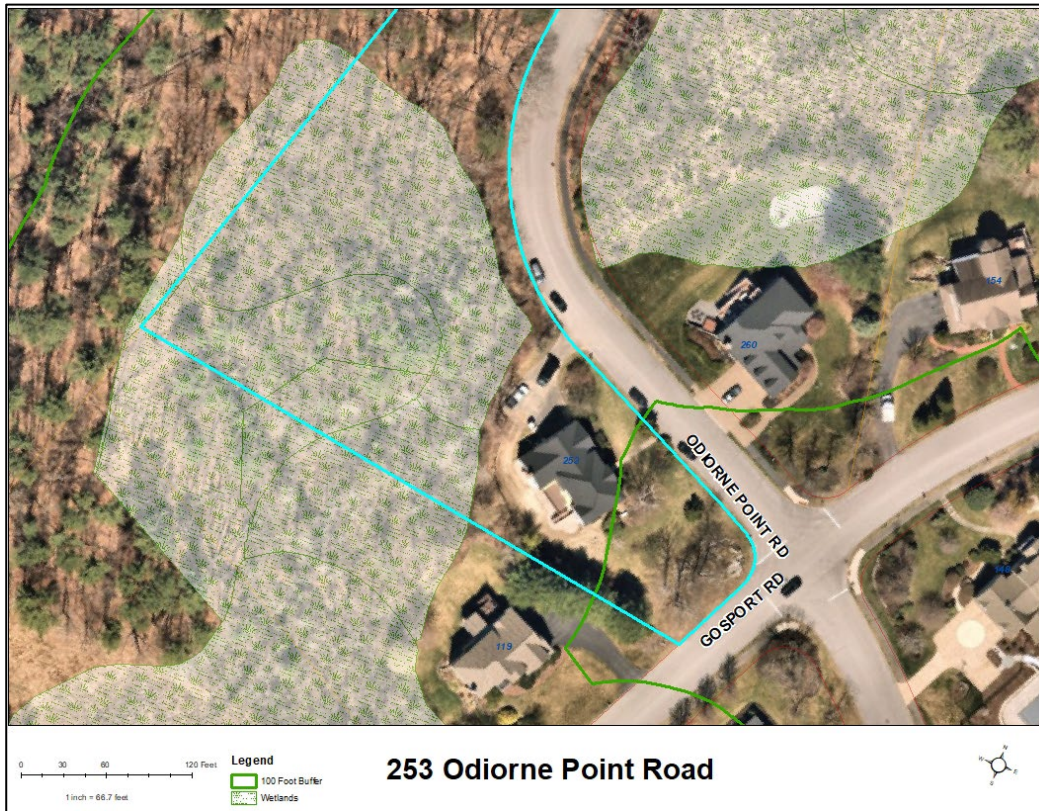
The Board's action in these matters has been deemed to be quasi-judicial in nature.

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. **Ryan T. and Heidi E. K Mullen (Applicants), and RTM Trust (Owner)**, for property located at **253 Odiorne Point Road** requesting a Wetland Conditional Use Permit according to Section 10.1017 of the Zoning Ordinance for proposed improvements to existing drainage issues on the property including the installation of crushed stone to help with infiltration into two existing French drains and an additional French drain installation. The proposal includes an extension of existing stone walls, a concrete slab addition under the deck, an expansion of a deck and the relocation of deck footings and stairs which totals approximately 2,500 s.f. of impact within the wetland buffer. The applicant proposes additional native buffer plantings and a rain garden to help slow and infiltrate stormwater before it reaches the wetland source on the property. Said property is located on Assessor Map 224 Lot 10-19 and lies within the Single Residence a (SRA) District. (LU-23-36)

Project Background

The applicant is proposing to extend two sections of an existing rock wall to help divert stormwater from the foundation of the house into the wetland. The applicant is also proposing granite steps to connect these areas to existing grading. A portion of the existing patio which has been damaged by water has been removed and 12-18" of clay soil is proposed to be dug up and replaced with a 12" of permeable crushed stone base and permeable pavers which sit over two existing French drains, allowing for better stormwater infiltration. The existing clay soil will be placed behind the extended 25' long rock wall along the southeast side of the property. A fire pit with a diameter of five feet will be placed in the center of the patio and a 10 x 10' concrete slab will be poured underneath the deck to support a hot tub. A French drain with a crushed stone lining will be installed where a natural culvert currently exists but is not effective. The existing back deck will have new support piers reinstalled and the deck will expand, which will include repositioning of the stairs.



Project Review, Discussion, and Recommendations

The project has been before the Zoning Board of Adjustment and the Conservation Commission. See below for details.

Zoning Board of Adjustment

The applicant was before the Zoning Board at their regularly scheduled meeting of Tuesday, February 28th, and was granted a variance for a mechanical unit located closer to the street than the principal structure. The mechanical unit is outside of the wetland buffer and is not subject to this CUP application. The applicant was before the Zoning Board again at their May 2nd meeting and was granted a variance to allow a 30-foot rear yard where 40 feet is required for a deck extension. The deck is located within the buffer and is part of this CUP application.

Conservation Commission

The Conservation Commission, at its regularly scheduled meeting of Wednesday, April 12, 2023, considered the application and voted to recommend approval of the Wetland Conditional Use Permit to the Planning Board with the following stipulations:

- 2.1) *A silt sock shall be used in addition to the existing silk fence to help mitigate construction impacts.*
- 2.2) *No plantings shall be planted within the wetland itself, just the buffer, and no removal of invasive shall be performed within the wetland.*

- 2.3) *A final planting site plan shall be submitted to the Planning Department for review and approval prior submission to the Planning Board.*
- 2.4) *In accordance to Section 10.1018.40 of the Zoning Ordinance, the applicant shall install permanent wetland boundary markers during the construction process. The signs can be purchased through the City of Portsmouth Planning and Sustainability department.*
- 2.5) *The Conservation Commission recommends the homeowner to follow NOFA land care management standards at the site.*
http://www.organiclandcare.net/sites/default/files/nofa_organic_land_care_standards_6thedition_2017_opt.pdf

Staff Analysis

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

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

This location is currently inundated during precipitation events and the principal structure along with the surrounding yard suffers from ponding damage and lack of infiltration. The proposed permeable pavers, replacement of clay soil, renovation of existing rock walls and installation of a new French drain should help to divert and better infiltrate stormwater into the wetland behind this home.

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

The entire backyard of this property is within the buffer and retains water during rain events. This area requires better stormwater mitigation and redirection in order to prevent further damage to the existing home.

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

The proposed project will be redirecting stormwater into the wetland and allowing for better infiltration with the loss of the clay soils. Additionally, the applicant is proposing to remove invasive Phragmites from the wetland and will install native wetland plantings which should help with the overall health of the wetland.

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

The proposed new areas of impact will only occur over existing lawn. The applicant is proposing to remove invasives within the immediate wetland but will

be replacing with native plantings.

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

Overall, the applicant has provided an alternative with a small impact to the wetland buffer and will be improving the health of the wetland through invasive removal and native plantings. The redirection of stormwater flow should help to infiltrate and slow stormwater as it reaches the wetland.

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

The applicant is proposing to plant winterberry along the wetland edge where invasives currently exist. Additional buffer plantings could be useful surrounding the proposed patio area and along the extended walls to help slow stormwater.

Planning Department Recommendation
Wetland Conditional Use Permit

- 1) *Vote to find that the Conditional Use Permit application meets the criteria set forth in Section 10.1017.50 and to adopt the findings of fact as presented.*

(Alt.) Vote to find that the Conditional Use Permit meets the criteria set forth in Section 10.1017.50 and to adopt the findings of fact as amended and read into the record.

- 2) *Vote to grant the Wetland Conditional Use permit with the following conditions:*

- 2.1) *A silt sock shall be used in addition to the existing silk fence to help mitigate construction impacts.*

- 2.2) *No plantings shall be planted within the wetland itself, just the buffer, and no removal of invasive shall be performed within the wetland.*

- 2.3) *A final planting site plan shall be submitted to the Planning Department for review and approval prior submission to the Planning Board.*

- 2.4) *In accordance to Section 10.1018.40 of the Zoning Ordinance, the applicant shall install wetland boundary markers during the construction process. The signs can be purchased through the City of Portsmouth Planning and Sustainability department.*

- 2.5) *The Conservation Commission recommends the homeowner to follow NOFA land care management standards at the site.*

http://www.organiclandcare.net/sites/default/files/nofa_organic_land_care_standards_6thedition_2017_opt.pdf

II. 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.

- D. The Planning Board will consider a recommendation to City Council to adopt amendments to Chapter 10 – Article 5A – CHARACTER-BASED ZONING, Section 10.5A20, Regulating Plan, Subsection 10.5A21.10 Contents of Regulating Plan, Map 10.5A21B – Building Height Standards, Section 10.5A43.30 – Building and Story Heights, Subsection 10.5A43.33, Section 10.5A43.40 – Maximum Building Footprint, Subsections 10.5A43.41-44, and Section 10.5A45 – Community Spaces, Subsection Figures 10.5A45.10 Community Spaces, Section 10.5A46.20 – Requirements to Receive Incentives to the Development Standards, Subsections 10.5A46.21-22, and Article 15 – DEFINITIONS, Section 10.1530 – Terms of General Applicability, of the Ordinances of the City of Portsmouth.

Background

The amendments before the Board are part of Phase 3 of the regulatory amendment workplan adopted by the City Council last year.

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) with 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 and Status of Amendments

On April 9, 2022, the Land Use Committee approved transmittal of the draft 2021 Regulatory Amendment Work Plan to City Council. The City Council approved the Regulatory Work Plan on April 18, 2022. The work plan consists of three phases:

1. **Phase 1: Code Clean-Up – Building Height Standards.** ***Adopted** Purpose: Improve regulatory implementation and align with legislative intent. Eliminate ambiguous sections that result in unintended consequences. (Adopted October 4, 2022)*
2. **Phase 2: Accessory Dwelling Unit Amendments (ADUs)** ***Adopted***

Purpose: Remove barriers and expand the number of eligible properties for ADUs and Senior Housing Facilities. (Adopted May 1, 2023)

3. Phase 3: Incentive Amendments Under Consideration

Purpose: Adjust incentives to place a higher emphasis on Workforce Housing.

Phase 1 was completed in the fall of 2022 with Zoning Amendments adopted in October and Phase 2 was completed with the ADU amendments adopted in May 2023. The amendments before the Board are part of the third phase and relate to development incentives in the Character-based zoning districts. It is anticipated that additional amendments will be brought forward related to the Gateway zoning districts later this summer or early fall.

Phase 3 Amendments Timeline | Land Use Committee Review and Recommendation

- The Land Use Committee, at their May 5, 2023 meeting, referred the density incentive amendments to the City Council.
- The City Council, at their May 15, 2023 meeting, referred the amendments to the Planning Board for a report back and scheduled a second reading for July 10, 2023.
- The Planning Board, at their May 25, 2023 work session, reviewed the amendments with some proposed changes in advance of the public hearing on June 15.
- The Land Use Committee, at their June 2, 2023 meeting, were given an update of the changes discussed at the Planning Board work session.

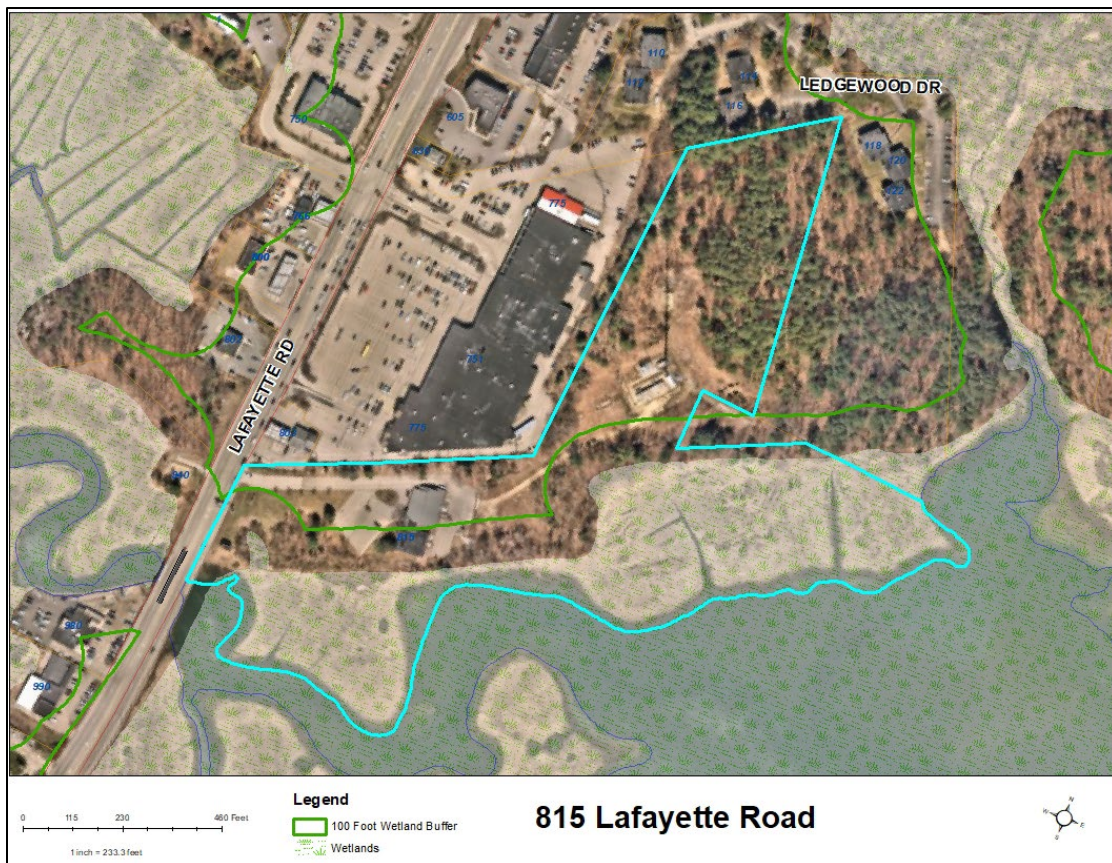
The City Council version of the amendments is included in the packet as well as a revised version with changes that were discussed at the May 25 Planning Board work session.

Planning Department Recommendation

- 1) *Vote to recommend approval of the zoning ordinance amendments to City Council.*
- 2) *Vote to recommend approval of the zoning amendments to City Council as amended.*

III. PRELIMINARY CONCEPTUAL CONSULTATION

- A. The request of **Prospect North 815 LLC (Owner)**, for property located at **815 Lafayette Road** requesting preliminary conceptual consultation for the demolition of the existing building and tower along Sagamore Creek and the construction of three 4-story, 24-unit multi-family buildings (72 total units) with first floor parking and a 2-story, 15,000 SF office building. The project will include associated site improvements such as parking, pedestrian access, utilities, stormwater management, lighting and landscaping. Said property is located on Assessor Map 245 Lot 3 and lies within the Gateway Neighborhood Mixed Use Corridor (G1) District. (LUPD-23-4)



The applicant has provided a set of preliminary plans for discussion with the Board. As authorized by NH [RSA 676:4,II](#), the Site Plan 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.

IV. CITY COUNCIL REFERRALS

Public Hearing and consideration of the amendments on density incentives referred to the Planning Board by the City Council at their May 15, 2023 regular meeting. (See Item III D above).

V. OTHER BUSINESS

- A. The request of **Granite State Convenience LLC (Applicant)**, and **Mastoran Restaurants INC (Owner)**, for property located at **2255 Lafayette Road** requesting a 1-Year Extension of the Site Plan Approval, Conditional Use Permit, and Wetland Conditional Use Permit granted on **June 23, 2022**.

Project Background

On June 23, 2022, the Planning Board granted a Wetland CUP and a CUP for a drive-thru facility in addition to the Site Plan approval for the project. The applicant is still working through the conditions of approval prior to obtaining a building permit, which will not be issued prior to the June 23rd expiration, thus they are requesting the extensions.

Section 10.246.10 below allows the applicant to request a one-year extension prior to the expiration of the original approval for a Conditional Use Permit for a drive-thru facility and the Wetland Conditional Use permit. Section 2.14 of the Site Plan regulations allows for an extension.

10.246 Expiration and Abandonment of Approvals

10.246.10 A conditional use permit shall expire unless a **building permit** is obtained within a period of one year from the date granted, unless otherwise stated in the conditions of approval. The **Board** may, for good cause shown, extend such period by as much as one year if such extension is requested and acted upon prior to the expiration date. No other extensions may be requested.

Section 2.14 Approval Expiration and Extension

1. Site plan approval by the Planning Board shall expire unless used (obtain a Building Permit) within a period of one (1) year from the date granted.
2. The Planning Board may, for good cause shown, extend such period by as much as one (1) year if requested and acted upon prior to the expiration date.

Planning Department Recommendation

- 1) *Vote to grant a one-year extension to the Planning Board Approval of the Site Plan and Conditional Use Permits to June 23, 2024.*
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- B.** The request of **RIGZ Enterprises LLC**, for property located at **806 US Route 1 Bypass** requesting a 1-Year Extension of the Site Plan Approval granted on June 23, 2022. (LU-22-81)

Project Background

On June 23, 2022, the Planning Board granted Site Plan approval for the project referenced above. The applicant has yet to obtain a building permit and has requested the one-year extension per Section 2.14 of the Site Plan Regulations below.

Section 2.14 of the Site Plan regulations allows for an extension.

Section 2.14 Approval Expiration and Extension

1. Site plan approval by the Planning Board shall expire unless used (obtain a Building Permit) within a period of one (1) year from the date granted.
2. The Planning Board may, for good cause shown, extend such period by as much as one (1) year if requested and acted upon prior to the expiration date.

Planning Department Recommendation

- 2) *Vote to grant a one-year extension to the Planning Board Approval of the Site Plan and Conditional Use Permits to June 23, 2024.*
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- C.** Chairman’s Updates and Discussion Items
- D.** Planning Board Rules and Procedures
- E.** Board discussion of Regulatory Amendments, Master Plan & other matters

VI. ADJOURNMENT