



City of Portsmouth  
Planning Department  
1 Junkins Ave, 3<sup>rd</sup> Floor  
Portsmouth, NH  
(603)610-7216

## Memorandum

To: Planning Board  
From: Peter Stith, Planning Manager  
Date: July 20, 2023  
Re: Recommendations for the July 20, 2023 Planning Board Meeting

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### I. APPROVAL OF MINUTES

A. Approval of the June 15, 2023 and June 22, 2023 minutes.

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#### 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 June 15, 2023 regular meeting and June 22 25, 2023 meeting and vote to approve meeting minutes with edits if needed.

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## II. DETERMINATION OF COMPLETENESS

### SUBDIVISION REVIEW

- A. The request of **Murdock Living Trust (Owner), 15 Lafayette Road** requesting Preliminary and Final Subdivision Approval to subdivide one lot into two lots to create the following: Proposed Lot 1 to be 9,129 square feet of lot area and 73.8 feet of frontage and Proposed Lot 2 to be 8,172 square feet of lot area and 102 feet of frontage.

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#### Planning Department Recommendations

- 1) *Vote to determine that the application is complete according to the Subdivision Review Regulations, (contingent on the granting of any required waivers under Sections IV of the agenda) and to accept the application for consideration.*
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### SITE PLAN REVIEW

- B. **REQUEST TO POSTPONE** The application of **Banfield Realty, LLC (Owner)**, for property located at **375 Banfield Road** requesting Site Plan review approval to demolish two existing commercial buildings and an existing shed and construct a 75,000 s.f. industrial warehouse building with 75 parking spaces as well as associated paving, stormwater management, lighting, utilities and landscaping. **REQUEST TO POSTPONE**

### III. 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 **CP Management Inc (Applicant)** and **Sarnia Properties INC, (Owner)**, for property located at **933 US Route 1 BYP** requesting a Conditional Use Permit in accordance with Section 10.1112.14 of the Zoning Ordinance to provide 83 parking spaces where 114 are required. Said property is located on Assessor Map 142 Lot 37 and lies within the Business (B) District. (LU-23-76)

#### Project Background

The applicant is seeking a conditional use permit to provide less than the required parking as a result of relocating their health club to this location. The site contains multiple tenants, ranging from office to warehouse, with one other gym located at the property. The applicant proposes to lease approximately 12,000 square feet of space, which is similar to what they occupy at the Raynes Avenue site.



**Project Review, Discussion, and Recommendations**

The project has been before the Board of Adjustment and the Technical Advisory Committee. See below for details.

**Board of Adjustment**

The Board of Adjustment, at its regularly scheduled meeting of Tuesday, June 27, 2023, considered the application and voted to grant a Special Exception to allow a health club greater than 2,000 square feet in the Business District.

**Technical Advisory Committee**

The Technical Advisory Committee, at their regularly scheduled meeting of Tuesday, June 6, 2023, voted to recommend approval to the Planning Board as presented.

**Conditional Use Permit for Parking**

The off-street parking standards in the City's Zoning Ordinance require 48 parking spaces for the use based on the parking requirements for a health club greater than 2,000 square feet as provided in Section 10.1112.32. The total parking requirement for all the uses onsite is 114 spaces.

Per Section 10.1112.14 of the Zoning Ordinance, the Planning Board may grant a conditional use permit to allow a building or use to provide less than the minimum parking spaces required by the off-street parking standards. An application for a conditional use permit for off-street parking must include a parking demand analysis.

Per Section 10.1112.142, an application for a conditional use permit shall identify permanent measures to reduce parking demand including but not limited to proximity to public transit and shared parking on a separate lot. The applicant has indicated if parking demand requires additional parking they could use space at 650 Maplewood and are currently in talks with the owner of that property.

The notice stated there will be 83 parking spaces provided, however some of the documents in the application indicate 82. In discussion with the applicant's representative, other areas on the site may be available to add a couple spaces and will provide that before or at the meeting on the 20<sup>th</sup>.

**Planning Department Recommendation**

**Parking Conditional Use Permit**

1) *Vote to find that the Conditional Use Permit application meets the criteria set forth in Section 10.1112.14 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 10.1112.14 and to adopt the findings of fact as amended and read into the record.*

2) *Vote to find that the number of off-street parking spaces provided will be adequate and appropriate for the proposed use of the property and to grant the conditional use permit as presented.*

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### III. 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 **Tanner Family Revocable Trust (Owner)**, for property located at **380 Greenleaf Avenue** requesting a Wetland Conditional Use Permit according to Section 10.1017 of the Zoning Ordinance for the construction of a new 20 x 20' one-story garage on a residential property with various additions of native buffer plantings and areas of storm water improvement to mitigate any impervious impacts from the garage. The proposal includes removal of 885 square feet of impervious asphalt, installation of 2' drip edge of crushed stone around the perimeter of the garage and 484 square feet of pervious pavers leading up to the garage where asphalt currently exists. Additional planting beds are proposed in areas of existing asphalt. Said property is located on Assessor Map 243 Lot 63 and lies within the Single Residence B (SRB) District. (LU-23-62)

#### **Project Background**

This application proposes the construction of a new 20 x 20' one-story garage on a residential property with various additions of native buffer plantings and areas of stormwater improvement to mitigate any impervious impacts from the garage. This property consists of a large wetland system and is completely within the 100' wetland buffer. AS noted in the description, the project includes removal of 885 square feet of impervious asphalt and the garage will be located on a portion of the area where impervious asphalt currently exists. A 2' drip edge of crushed stone is proposed around the perimeter of the garage and 484 square feet of pervious pavers will be installed leading up to the garage where asphalt currently exists.



### **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, June 14, 2023, considered the application and voted to recommend approval of the Wetland Conditional Use Permit to the Planning Board with the following conditions:

- 1. The applicant shall provide detailed specifications for the proposed pervious pavers including a cross-section plan and information about how they will be installed within the driveway area.*
- 2. The applicant shall provide a maintenance plan for the proposed pervious pavers.*

#### **Staff Analysis**

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

The applicant is proposing to build the garage on an area of already disturbed and impervious land within the buffer. The overall project will be reducing the amount of impervious surface on the property and will be infiltrating stormwater and further buffering the wetland through planting beds.

- 2. There is no alternative location outside the wetland buffer that is feasible and***

***reasonable for the proposed use, activity or alteration.***

The entirety of this property is either within the wetland or the wetland buffer. There is no alternative location to build and the applicant is proposing to build in an existing disturbed area to minimize further impact to the buffer.

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

The applicant is proposing an overall reduction in impervious area to the site. This proposal will increase the number of plantings in the buffer while also helping to infiltrate and slow stormwater on the property due to added crushed stone drip edges.

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

The applicant is proposing no disturbance to the natural vegetative state on the property. The existing asphalt will be removed, and a garage and pervious pavers will be placed. Additional plantings will add to the vegetated buffer.

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

While the entire parcel is within wetland and buffer boundaries, the applicant is proposing to build in an area that is already impervious and will be significantly reducing existing impervious area while offsetting impacts with additional plantings, stormwater controls and pervious pavers.

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

The applicant is not proposing to disturb any area within the first 25' of the wetland boundary. Disturbances within the buffer will be offset with the removal of asphalt, the addition of native buffer plantings and stormwater controls.

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***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 with the following conditions:*

- 2.1) The applicant shall provide detailed specifications for the proposed pervious pavers including a cross-section plan and information about how they will be installed within the driveway area.*
  - 2.2) The applicant shall provide a maintenance plan for the proposed pervious pavers.*
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### III. 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 **Murdock Living Trust (Owner), 15 Lafayette Road** requesting Preliminary and Final Subdivision Approval to subdivide one lot into two lots to create the following: Proposed Lot 1 to be 9,129 square feet of lot area and 73.8 feet of frontage and Proposed Lot 2 to be 8,172 square feet of lot area and 102 feet of frontage. Said property is located on Assessor Map 152 Lot 2 and lies within the General Residence A (GRA) and Historic Districts. (LU-23-26)

#### **Project Background**

The applicant is proposing to subdivide one lot into two, with the new lot having frontage on Orchard Street. The proposed lot will conform to the dimensional standards for the GRA district. The remainder lot received a variance from the Board of Adjustment for the lack of frontage because of the proposed subdivision. The applicant has requested several waivers from the general requirements, because no development has been planned for the lot at this time.



**Project Review, Discussion, and Recommendations**

The project has been before the Zoning Board of Adjustment and the Technical Advisory Committee. See below for details.

**Zoning Board of Adjustment**

The applicant was before the Zoning Board at their regularly scheduled meeting of Tuesday, April 18th, and was granted a variance for 73.8 feet of street frontage where 100 feet is the requirement in the GRA district.

**Technical Advisory Committee**

The Technical Advisory Committee, at its regularly scheduled meeting of Tuesday, June 6, 2023, considered the application and voted to recommend approval of the subdivision to the Planning Board with the following conditions:

- 2.1) *Note #15 shall be corrected on the plan.*

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**Planning Department Recommendation**

**Subdivision Waiver**

1. *Vote to grant the requested waivers to the Subdivision Standards from Section VI General Requirements #5 Driveways, #6 Drainage Improvements, #7 Municipal Water Services, #8 Municipal Sewer Services, #9 Installation of Utilities and #14 Erosion and Sedimentation Controls. [NOTE: Motion maker must select one of the following options]:*

- a) *Strict conformity would pose an unnecessary hardship to the applicant and waiver would not be contrary to the spirit and intent of the regulations.*

*[OR]*

- b) *Specific circumstances relative to the subdivision, or conditions of the land in such subdivision, indicate that the waiver will properly carry out the spirit and intent of the regulations.*

**Subdivision**

- 1) *Vote to find that the Subdivision (Lot Line Revision) application meets the standards and requirements set forth in the Subdivision Rules and Regulations to adopt the findings of fact as presented.*

*(Alt.) Vote to find that the Subdivision (Lot Line Revision) application meets the standards and requirements set forth in the Subdivision Rules and Regulations to adopt the findings of fact as amended and read into the record.*

- 2) Vote to grant Preliminary and Final Subdivision Approval with the following stipulations:*
  - 2.1) The subdivision plan, and any easement plans and deeds shall be recorded simultaneously at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.*
  - 2.2) Property monuments shall be set as required by the Department of Public Works prior to the filing of the plat;*
  - 2.3) GIS data shall be provided to the Department of Public Works in the form as required by the City;*
  - 2.4) Prior to issuance of a building permit, owner shall obtain necessary permits or approvals from DPW to serve the site.*

### III. 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 request of **ADL 325 Little Harbor Road Trust (Owner)**, for property located at **325 Little Harbor Road** requesting a Wetland Conditional Use Permit according to Section 10.017 of the Zoning Ordinance for the replacement of the existing bridge with a timber pile bridge and removal of the existing causeway. The project proposes permanent impacts within the wetland buffer of 36,358 square feet and 3,443 square feet of permanent impacts within the tidal wetland. Said property is located on Assessor Map 205 Lot 2 and lies within the Rural (R) District. (LU-23-81)

#### **Background**

This project proposes the construction of a new bridge for access to Lady Isle aka Belle Isle, with the demolition of the existing bridge proposed for after construction is complete. This project is required as heavy maintenance and construction vehicles need to access Lady Isle, and under the current bridge there are signs of degradation and failure. The proposed work will occur on private land and will cross over the Piscataqua River, putting this project within the City's wetland and buffer boundaries, as well as the tidal and shoreline buffers. This project proposes permanent impacts within the wetland buffer of 36,358 square feet and 3,443 square feet of permanent impacts within the tidal wetland. Re-grading and filling is needed to accommodate elevating the new bridge to a higher elevation to adapt to sea level rise. Restoration of existing salt marsh and Marsh Elder (*Iva frutescens*) species is also proposed.



**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, June 14, 2023, considered the application and voted to recommend approval of the Wetland Conditional Use Permit to the Planning Board with the following conditions:

- 1. In accordance with Section 10.1018.40 of the Zoning Ordinance, applicant shall install permanent wetland boundary markers adjacent to the freshwater wetland areas during project construction. These can be purchased through the City of Portsmouth Planning and Sustainability Department.*
- 2. Applicant shall provide a monitoring report detailing the success of the planting plan one year after project completion and demonstrate compliance with the NHDES monitoring requirements when complete.*
- 3. The Salicornia be relocated or added to the planting plan as additional plantings.*
- 4. An independent wetland scientist that specializes in salt marsh restoration shall be hired to review the salt marsh restoration plan and provide comments back to the applicant.*
- 5. The applicant shall research ways to reduce the disturbance to the local Nudibranch fish population.*

The project will also require a State Wetland permit, which the Conservation Commission recommended approval of to the State.

**Staff Analysis**

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

The proposed site has an existing bridge connecting the mainland to Lady Isle, where a safe method of transport is needed to get residents, contractors, guests, etc. to the property and back from the mainland. The proposed project would construct a new bridge spanning a tidal water way connecting the island to the mainland with a higher elevation to increase resiliency to sea level rise, a lifespan of approximately 75 years, and an increased passage size to allow for improved tidal flow over what currently exists.

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

The existing and proposed bridge are within the City tidal wetlands and tidal buffer zone as well as State tidal wetlands and tidal buffer zone. To provide access to the Island any reconstruction, rehab work or new construction of the bridge must occur in these wetland and buffer areas.

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

The applicant has performed a study of the habitat underneath the current bridge and has deemed it not highly valuable. Surrounding impacts to salt marsh and Marsh Elder (*Iva frutescens*) habitats will be minimized through the introduction of new plantings of salt marsh habitat (both low and high marsh) and replanting of existing Marsh Elder (*Iva frutescens*) in a more protected area.

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

This proposal will require regrading and filling the current private drive to increase the height of the road and proposed bridge. Additionally, the new location of the bridge will impact areas of existing vegetation. All impacted vegetation will be remediated through a restoration plan of new plantings on site.

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

Given the nature of the project, replacing the bridge in its current location would continue to cause scouring of the channel under the bridge and would impact the function of the waterway. Placement of the bridge further east would cause unwanted impacts to well-established salt marsh. The proposed placement on the west side of the existing bridge shows the least adverse impacts to the tidal waterway and salt marsh.

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

Applicant is proposing planting low and high marsh areas along the shoreline along with native buffer species between the shoreline/marsh and the road.

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**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 application 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) In accordance with Section 10.1018.40 of the Zoning Ordinance, applicant shall*

*install permanent wetland boundary markers adjacent to the freshwater wetland areas during project construction. These can be purchased through the City of Portsmouth Planning and Sustainability Department.*

*2.2) Applicant shall provide a monitoring report detailing the success of the planting plan one year after project completion and demonstrate compliance with the NHDES monitoring requirements when complete.*

*2.3) The Salicornia be relocated or added to the planting plan as additional plantings.*

*2.4) An independent wetland scientist that specializes in salt marsh restoration shall be hired to review the salt marsh restoration plan and provide comments back to the applicant.*

*2.5) The applicant shall research ways to reduce the disturbance to the local Nudibranch fish population.*



**III. PUBLIC HEARINGS – NEW BUSINESS**

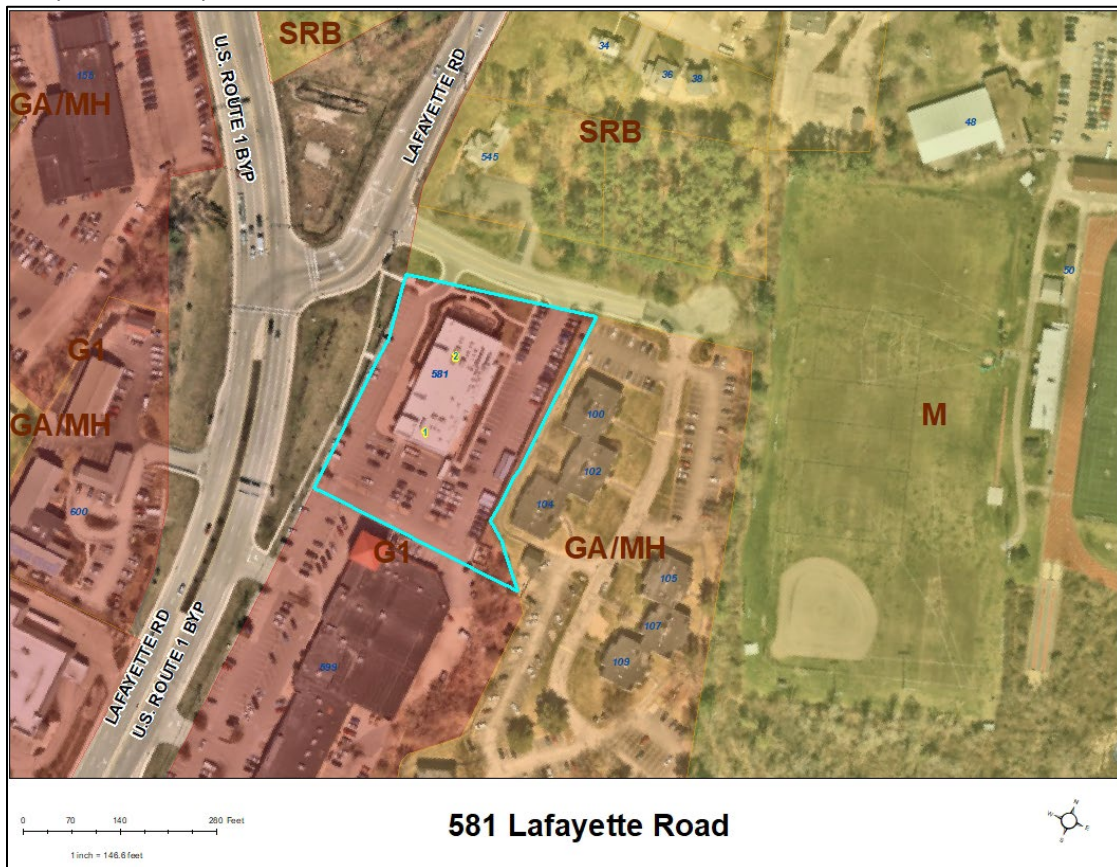
*The Board’s action in these matters has been deemed to be quasi-judicial in nature. If any person believes any member of the Board has a conflict of interest, that issue should be raised at this point or it will be deemed waived.*

- E. REQUEST TO POSTPONE** The application of **Banfield Realty, LLC (Owner)**, for property located at **375 Banfield Road** requesting Site Plan review approval to demolish two existing commercial buildings and an existing shed and construct a 75,000 s.f. industrial warehouse building with 75 parking spaces as well as associated paving, stormwater management, lighting, utilities and landscaping. Said property is shown on Assessor Map 266 Lot 7 and lies within the Industrial (I) District. **REQUEST TO POSTPONE (LU-20-259)**

*Staff Note: The Wetland Conditional Use Permit was not advertised or included in the packet, thus the reason for postponing.*

#### IV. PRELIMINARY CONCEPTUAL CONSULTATION

- A. The request of Atlas Commons LLC (Owner), for property located at 581 Lafayette Road requesting an addition to the existing commercial building for residential dwelling units with the associated site improvements. Said property is shown on Assessor Map 229 Lot 0229-008B and lies within the Gateway Corridor (G1) District. (LUPD-23-5)**



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.

**V. OTHER BUSINESS**

- A.** The request of **230 Commerce Way, LLC** for property located at **230 Commerce Way** requesting a 1-year extension to the Amended Site Plan Approval and Wetland Conditional Use Permit was originally granted on **July 21, 2022**. (LU– 22-14)

Project Background

On July 21, 2022, the Planning Board granted a Wetland CUP and Amended Site Plan approval for the project to construct a new two-story building with a 12,500 square foot footprint totaling 25,000 square feet with associated site improvements.

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.

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**Planning Department Recommendation**

- 1) *Vote to grant a one-year extension to the Planning Board Approval of the Site Plan and Wetland Conditional Use Permit to July 21, 2024.*
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- A.** Chairman's Updates and Discussion Items
- B.** Planning Board Rules and Procedures
- C.** Board discussion of Regulatory Amendments, Master Plan Scope & other matters

**VI. ADJOURNMENT**