



City of Portsmouth  
Planning Department  
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Portsmouth, NH  
(603)610-7216

Memorandum

To: Planning Board

From: Peter Stith, Planning Manager

Date: January 18, 2024

Re: Recommendations for the January 18, 2024 Planning Board Meeting

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I.

**I. ELECTION OF OFFICERS**

The Chair will call for nominations for Chair and Vice Chair for the year.

Please find the section on Board Membership and Officers as found in the [Planning Board Rules and Procedures](#) below:

*B. Board Membership and Officers.*

...

*2. Officers: Board members shall elect annually from its membership in January of each year a Chair and Vice-Chair. Unless voted to the contrary by the Board, the vote shall be conducted by secret ballot. (While this is currently in our Rules and Procedures this procedure is inconsistent with State Law and is not followed for Planning Board Elections) The concurring votes of five members in attendance at a meeting shall be necessary to initiate the election of Officers.*

*3. Duties of the Chair: The Chair shall preside at all meetings; shall have complete voting privileges on all matters, including the election of officers; and, report any discussion or action relative to the Board that has taken place since the last meeting.*

*4. Duties of the Vice-Chair: The Vice-Chair shall assist the Chair and, in the absence of the Chair, shall have all the powers and duties of the Chair.*

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**II. APPROVAL OF MINUTES**

A. Approval of the December 21, 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 December 21, 2023 meeting and vote to approve meeting minutes with edits if needed.*

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### III. DETERMINATION OF COMPLETENESS

#### SITE PLAN REVIEW

- A. The request of **Portsmouth Submarine Memorial Association (Owners)**, for property located at **569 Submarine Way** requesting Amended Site Plan Approval to construct an approximately 1,588 square foot addition attached to the existing visitor center building and associated site improvements. Said property is located on Assessor Map 209 Lot 87 and lies within the Single Residence B (SRB) District
  
- B. The request of **Prospect North 815 LLC (Owners)**, for property located at **815 Lafayette Road** requesting Site Plan Review Approval 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. The project will include associated site improvements such as parking, pedestrian access, community space, utilities, stormwater management, lighting and landscaping; and a Development Site Conditional Use Permit under Section 10.5B43.10. Said property is located on Assessor Map 245 Lot 3 and lies within the Gateway Corridor (G1) District.

#### Planning Department Recommendation

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- 1) *Vote to determine that Items A & B are complete according to the Site Plan Review Regulations, (contingent on the granting of any required waivers under Section IV of the agenda) and to accept the applications for consideration.*
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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.*

- A. The request of **Portsmouth Submarine Memorial Association (Owners)**, for property located at **569 Submarine Way** requesting Amended Site Plan Approval to construct an approximately 1,588 square foot addition attached to the existing visitor center building and associated site improvements. Said property is located on Assessor Map 209 Lot 87 and lies within the Single Residence B (SRB) District.

#### **Project Background**

The applicant is proposing to construct an addition to the existing museum that will allow for additional exhibit space. The amended site plan includes upgrades to stormwater infrastructure, landscaping, and site improvements.



#### **Project Review, Decisions, and Recommendations**

The applicant was before the Board of Adjustment and the Technical Advisory Committee. See below for details.

Zoning Board of Adjustment

The applicant was before the at its regularly scheduled meeting of Tuesday, October 17, 2023 to allow a museum use where it is currently not allowed. The Board voted to approve the variance as presented.

Technical Advisory Committee

The applicant was before TAC for at their regularly scheduled meeting of Tuesday, December 5, 2023 meeting and recommended approval with the following conditions:

- 1) *Applicant will provide documentation that the water line easement that crosses over parcel 209/54 has been assigned to the City.*
- 2) *Lighting plan will be provided and reviewed by City Staff prior to consideration by the Planning Board.*
- 3) *Bollards and signage will be noted on the site plan for handicap parking spaces.*

***Conditions 2 and 3 have been satisfied. After consultation with the Legal Department pertaining to Condition 1 above, the staff recommended condition below has been revised.***

Planning Department Recommendation

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Site Plan Approval

- 1) *Vote to find that the Site Plan Application meets the requirements set forth in the Site Plan Regulations Section 2.9 Evaluation Criteria and adopt the findings of fact as presented.*

*(Alt.) Vote to find that the Site Plan Application meets the requirements set forth in the Site Plan Regulations Section 2.9 Evaluation Criteria and adopt the findings of fact as amended.*

- 2) *Vote to grant Amended Site Plan Approval with the following conditions:*

*2.1) The applicant will provide documentation that it has issued and recorded a license authorizing the City to utilize its existing water line easement, the terms and conditions to be approved by the Planning & Sustainability Director.*

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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.*

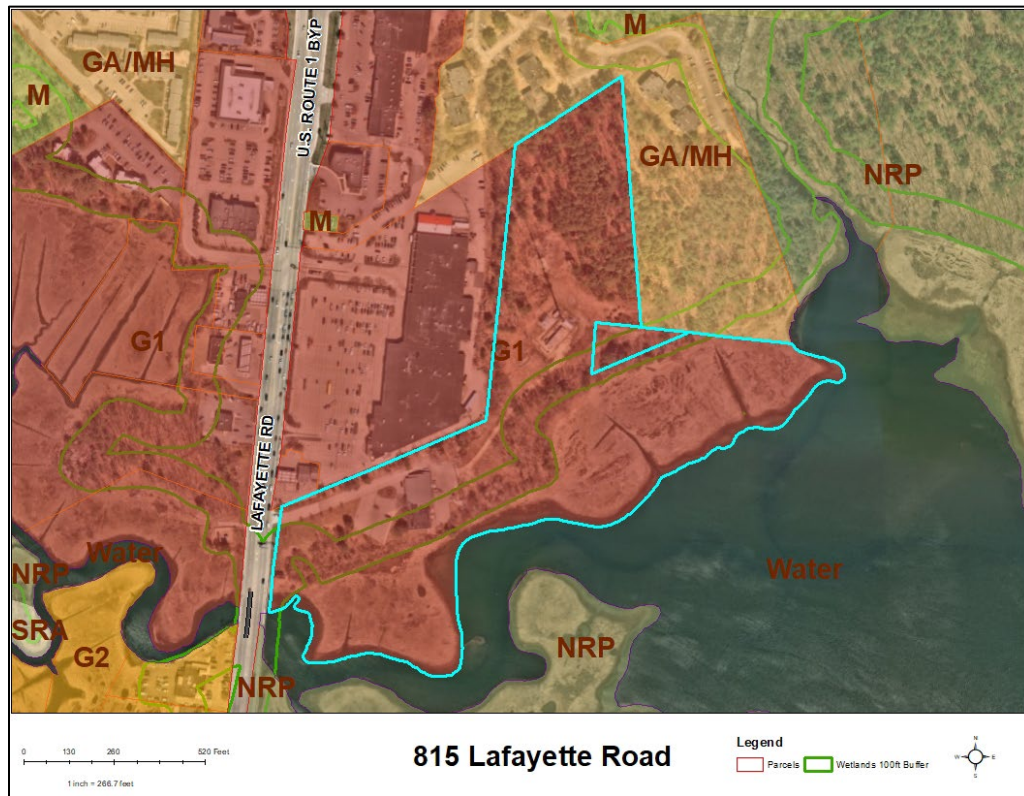
***It is recommended that New Business Items IIIB & C be discussed together and voted on separately. A motion is required to consider these items together.***

- B.** The request of **Prospect North 815 LLC (Owners)**, for property located at **815 Lafayette Road** requesting Site Plan Review Approval 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. The project will include associated site improvements such as parking, pedestrian access, community space, utilities, stormwater management, lighting and landscaping; and a Development Site Conditional Use Permit under Section 10.5B43.10. Said property is located on Assessor Map 245 Lot 3 and Lot 4 and lies within the Gateway Corridor (G1) District.

##### **Project Background**

This project includes removal of the existing building and impervious surface within the 100-foot buffer and construction of three new apartment buildings, containing 24 units each. The property is in the Gateway (G1) District on Lafayette Road. The intent of the G1 district is *“to facilitate a broad range of housing types together with compatible commercial, fabrication, and civic uses in a high-quality pedestrian environment with moderate to high density”*. If more than one principal structure is built as part of a development, it is considered a development site and requires a Conditional Use Permit from the Planning Board and must meet the findings in Section 10.5B43.10. In the G1 district, 10% of the development site must be community space as required by Section 10.5B41.80. The subject lot is over 19.5 acres (855,567 square feet), of which 85,556 square feet will be designated as a greenway trail community space type, which will include a portion of Lot 4. The project will result in a reduction of impervious with the removal of 11,738 sf within the buffer.





### **Project Review, Discussion, and Recommendations**

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

#### **Board of Adjustment**

The Board of Adjustment, at its regularly scheduled meeting of Tuesday, September 26, 2023, voted to grant the following variances:

- 1) Variance from Section 10.5B33.20 (Front Build-out) to permit a front build out of less than 50% of the total front yard width; and
- 2) Variance from Section 10.5B33.30 (Façade Orientation) to permit a façade orientation that is not parallel with the front property line.

#### **Conservation Commission**

The Conservation Commission, at its regularly scheduled meeting of Wednesday, November 8, 2023, voted 6-1 to recommend approval to the Planning Board with the following conditions:

1. A split rail fence shall be installed beside the trail on the shoreline side to discourage foot traffic and general disturbance within the 50' buffer.
2. Trail shall not extend into the 50' buffer, with no manicured landscaping activity happening between the 0-50' buffer other than invasive species removal.
3. Erosion control measures will be used during the invasive species removal process to ensure no impact to wetland and salt marsh habitat. Please include

*these details on the plan set.*

- 4. Applicant shall submit seasonal updates to the Planning & Sustainability Department once invasive species removal begins until plantings have gone in, and the buffer is stabilized. One year after plantings, if at least an 80% success rate has not been reached, applicants will replant and report back to the Planning & Sustainability Department one year after planting is complete and each subsequent year until an 80% planting success rate has been achieved.*
- 5. Please add a note to the plan that no salt storage will be allowed within the wetland and/or wetland buffer. All salt storage on site must be covered to minimize impacts from runoff.*
- 6. The community trail shall have a minimum width of 5' with a maximum width of 6'.*
- 7. Pavement sweeping maintenance shall be performed between March and April for the best results.*
- 8. Please relocate the proposed trash receptacle from the 0-50' buffer.*
- 9. Please include the locations of where signage designating public access and community space will be placed along the path. Please include a detailed specification of the signs within the plan set and include signage indicating that dogs must be leashed at all times.*
- 10. Please develop a long-term maintenance plan for the community space to be reviewed and approved by Planning and Sustainability Department staff and provided to the Planning Board with the Wetland Conditional Use Permit application for approval.*
- 11. Please clarify in the final submission to the Planning Board the exact location of the proposed community trail.*
- 12. In accordance with Section 10.1018.40 of the Zoning Ordinance, applicant shall install permanent wetland boundary markers during project construction. These can be purchased through the City of Portsmouth Planning and Sustainability Department.*

***\*Conditions 4 and 12 are included in the staff recommendation, all other conditions have been satisfied.***

Technical Advisory Committee

The Technical Advisory Committee, at its regularly scheduled meeting of Tuesday, December 5, 2023, voted to recommend approval to the Planning Board with the following conditions:

- 1. Applicant will revise the submission letter to include details about the portion of the community space located on the adjacent lot for the Development Site Conditional Use Permit.*
- 2. The applicant will revise site note 13 to replace "Knox Box" to read "Knox Padlock".*

***\*The TAC conditions have been satisfied in the Planning Board submission.***



Staff Analysis – Wetland CUP

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

The applicant is proposing to remove all existing impervious from the wetland buffer while introducing a riprap stormwater outlet and will be replacing with native landscaping (including buffer seed mixes), a woodchip walking path and multiple 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 applicant is proposing to remove all existing impervious from the buffer, this will improve the health of the buffer overall.

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

The applicant is proposing to remove all existing impervious from the buffer and replace with native landscaping, planting beds, and buffer seed mix. Stormwater from the development outside of the buffer will be routed through a jellyfish filter treatment system and will exit into a constructed riprap outlet within the 50-100' buffer.

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

The applicant will be restoring the natural vegetated state and woodland area with new plantings and buffer seed mix.

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

The applicant is proposing the restoration of the buffer with the removal of impervious, improved stormwater treatment, additional plantings, and the elimination of lawn within the buffer.

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

The applicant is proposing to restore areas previously disturbed in the wetland buffer with buffer seed mix and plantings. The proposed community space within the 25' vegetated buffer is already protected and as such, would not qualify as community space.

**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 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 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 condition:

- 2.1) The applicant shall submit seasonal updates to the Planning & Sustainability Department once invasive species removal begins until plantings have gone in, and the buffer is stabilized. One year after plantings, if at least an 80% success rate has not been reached, applicants will replant and report back to the Planning & Sustainability Department one year after planting is complete and each subsequent year until an 80% planting success rate has been achieved.
- 2.2) In accordance with Section 10.1018.40 of the Zoning Ordinance, applicant shall install permanent wetland boundary markers during project construction. These can be purchased through the City of Portsmouth Planning and Sustainability Department.
- 2.3) The final alignment of the trail is subject to review and approval by the planning and sustainability director and any subsequent modification will be subject to a site plan amendment.
- 2.4) Remove note 9 on the proposed community space trail sign that limits use to Portsmouth residents only.

**Development Site Conditional Use Permit**

1) Vote to find that the Conditional Use Permit application meets the criteria set forth in Section 10.5B43.10 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 10.5B43.10 and to adopt the findings of fact as amended and read into the record.

2) Vote to grant the conditional use permit for a Development Site subject to the requirements and conditions of site plan review approval.

**Site Plan Approval**

1) Vote to find that the Site Plan Application meets the requirements set forth in the Site Plan Regulations Section 2.9 Evaluation Criteria and adopt the findings of fact as presented.

(Alt.) Vote to find that the Site Plan Application meets the requirements set forth in the Site Plan Regulations Section 2.9 Evaluation Criteria and adopt the findings of fact as amended.

2.) Vote to grant Site Plan Approval with the following conditions:

Conditions to be satisfied subsequent to final approval of site plan but prior to the issuance of a building permit or the commencement of any site work or construction activity:

- 2.1) The site plan, and any easement plans and deeds shall be recorded at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.
- 2.2) The applicant shall agree to pay for the services of an oversight engineer, to be selected by the City, to monitor the construction of improvements within the public rights-of-way and on site.
- 2.3) Owner shall provide an access easement to the City for water valve access and leak detection. The easement shall be reviewed and approved by the Planning and Legal Departments prior to acceptance by the City Council.
- 2.4) 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>

Prior to the issuance of a Certificate of Occupancy or release of the bond:

- 2.5) 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.
  - 2.6) A stormwater inspection and maintenance report shall be completed annually and copies shall be submitted for review to the City's Stormwater Division/ Public Works 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 **Prospect North 815 LLC (Owners)**, for property located at **815 Lafayette Road** requesting a Wetland Conditional Use Permit under Section 10.1017.50 of the Zoning Ordinance for work within the 100 ft wetland buffer is limited to the removal of existing impervious surfaces, existing leach field and septic system, and the restoration and enhancement of these areas with native grasses, shrubs, and trees. Said property is located on Assessor Map 245 Lot 3 and lies within the Gateway Corridor (G1) District.

***See Item IIIB under New Business above.***

#### 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.*

- D. The request of **HCA Health Services of New Hampshire DBA: Portsmouth Regional Hospital & C/O Ducharme McMillen & Associates (Owners)**, for property located at **333 Borthwick Avenue** requesting Amended Site Plan approval to amend the conditions of approval from July 21, 2022. Said property is located on Assessor Map 240 Lot 2-1 and lies within the Office Research (OR) District.

##### **Project Background**

The radiology/oncology addition was approved at the July 21, 2022 Planning Board meeting. The building construction is complete, and they are seeking a Certificate of Occupancy (CO) to start using the facility. Two subsequent conditions that are required to be satisfied prior to the issuance of CO have not been completed are provided below:

*2.6) The wetland area adjacent to the emergency area will be dredged from Borthwick to the oxygen tank area to restore free flowing drainage. This will be done in conjunction with an associated wetland enhancement along the edges of this same area.*

*2.8) 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.*

The applicant is actively pursuing permitting for the dredging work and are requesting these two conditions be modified to allow issuance of the CO to use the facility while they seek additional approvals for the dredging and work in the wetlands. The applicant has provided a timeline indicating they have been working throughout 2023 on the dredging plan and are close to submitting a permit application to NHDES. Per their timeline, the applicant expects the work to be complete by April 2025, however the draft recommendation extends that to December 2025, with the understanding that if the work has not been completed, the City will pull the bond and have the work completed.

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##### **Planning Department Recommendation**

- 1) *Vote to modify prior conditions of approval 2.6 and 2.8 from the letter of decision dated July 27, 2022 and add condition 2.9:*

*2.6) Prior to the bond release and in conjunction with the new site review agreement in condition 2.9, the wetland area adjacent to the emergency area will be dredged from Borthwick to the oxygen tank area to restore free flowing drainage. This will be done in conjunction with an associated wetland enhancement along the edges of this same area.*

*2.8) Prior to the bond release, 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.*

*2.9) The applicant will execute a new site review agreement for the completion of the dredging work to be completed by December 2025. The new agreement will be secured by surety, in the same amount as the current bond.*

**V. CITY COUNCIL REFERRALS**

**A. Solar Energy Panel Amendment**

Background

- A. In anticipation of a referral from the City Council at their January 16, 2023 meeting for a zoning amendment related to solar energy panels in the Historic District, see attached memo from Deputy City Attorney McCourt. Staff will provide a supplemental memo prior to the Planning Board meeting if the referral differs from what is attached in Attorney McCourt’s memo.

**C. EV Charging Station Amendments**

Background

This information was included in the staff memo for the November meeting and at that time, the Board agreed to hold a work session in January to discuss these amendments further, which is scheduled for January 25, 2024.

At their May 2, 2022 meeting, The City Council referred draft zoning ordinance amendments for Electric Vehicle Charging Stations to the Planning Board for a referral back for first reading. Attached is the draft sent by Council to the Planning Board. Staff reviewed the proposed amendments and provided a redlined version for consideration and discussion.

Currently, an Electric Vehicle Charging station as a principal use is allowed by special exception in the GB, G1, B, CD4-W and I zones under a motor vehicle service station as described in the definition below. Amending the Zoning ordinance to allow EV chargers as a principal use in more zones could ease the installation of EV Charging infrastructure in Portsmouth. As an accessory use, EV charging station are currently allowed as an accessory use to any permitted principal use.

<p><b>Motor vehicle service station</b></p> <p>An <b>establishment</b> that sells fuel (including but not limited to gasoline, diesel, natural gas, electricity or hydrogen) to individual vehicles. A <b>motor vehicle service station</b> may include the following:</p> <ul style="list-style-type: none"><li>▪ retail sale of propane and kerosene;</li><li>▪ retail sale of products required for motor vehicle maintenance such as oil, transmission fluid, brake fluid, polish, wax, fuel additives and treatments, wipers, tires, batteries, windshield wiper fluid, cleaning fluids and similar items;</li><li>▪ minor automotive maintenance such as the addition of fluids, replacement of wiper blades and similar activities; and</li><li>▪ retail sale of over-the-counter consumer merchandise.</li></ul>
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**VI. OTHER BUSINESS**

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**A. Chairman's Updates and Discussion Items**

**B. Planning Board Rules & Procedures**

Discuss the recent draft amendments to the Rules & Procedures.

***Planning Department Recommendation***

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*Vote to adopt the Planning Board Rules & Procedures as amended.*

**C. Board Discussion of Regulatory Amendments and Other Matters**

**VII. ADJOURNMENT**