



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

Memorandum

To: Planning Board

From: Peter Stith, AICP
Planning Manager

Date: April 25, 2024

Re: Recommendations for the April 25, 2024 Planning Board Meeting

I. DETERMINATIONS OF COMPLETENESS

SITE PLAN REVIEW

- A. REQUEST TO POSTPONE** The request of **Atlas Commons LLC (Owner)**, for property located on **581 Lafayette Road** requesting Site Plan review approval for two 4-story additions to the existing building that will total 72 residential units with associated site improvements including lighting, utilities, landscaping, and stormwater treatment/management and a Conditional Use Permit from Section 10.5B72 for increased density, building height and footprint.... Said property is located on Assessor Map 229 Lot 8B and lies within the Gateway Corridor (G1) District. (LU-23-189) **REQUEST TO POSTPONE**

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 **ZJBV Properties LLC (Owner)**, for property located at **180 Islington Street** requesting a Conditional Use Permit in accordance with Section 10.1112.14 of the Zoning Ordinance to provide 2 preexisting nonconforming parking spaces where 9 are required. Said property is located on Assessor Map 137 Lot 19 and lies within the Character District 4-L2 (CD4-L2) and Historic Districts. (LU-24-27)

Project Background

The subject property contains an apartment on the second floor and two commercial spaces on the ground floor. The apartment has been used for decades, with the commercial spaces rented infrequently. In 2019 it was presented to the City that there were 3 conforming parking spaces on the property which would account for the parking required for the residential unit and one of the commercial spaces, however the City does not have record of dimensionally compliant spaces for this property. Since 2019, multiple tenants have tried to rent the second commercial space but were advised they would need a parking CUP to account for the deficiency in parking with all units occupied. The prospective tenant is now going through the CUP process to request less than the required parking in order to rent the second space and operate their business.

The plan provided by Altus Engineering identified zero conforming parking spaces and identified three spaces do not meet the City's dimensional standards for a parking space. The City acknowledges the two tandem spaces can be used for the apartment since the apartment use was established and has been in use for decades. The commercial uses spaces have not always been occupied and the City does not have documentation to establish the three conforming spaces that were thought to exist in 2019, the third space located in the front left side would not be considered a lawful preexisting nonconforming use and would require a variances to be located in the front of the building and to back into the street for a nonresidential use. This area should also be designated for two-wheeled vehicles such as scooters, motorcycles and/or bicycles.



Project Review, Decisions, and Recommendations

The applicant was before the Technical Advisory Committee. See below for details.

Technical Advisory Committee

The applicant was before the Technical Advisory Committee at its regularly scheduled meeting of Tuesday, April 2, 2024 and the Committee voted to recommend approval with the following conditions:

- 1. Applicant shall submit an updated parking demand analysis that must include current and proposed dimensions of parking area on site and vehicle designations.*
- 2. Proposed plans shall not have any parking blocking the sidewalk.*
- 3. Front area should be striped for scooter and motorcycle parking.*

The parking demand has been updated and reviewed by staff. The applicant has proposed signage for moped parking in lieu of striping.

Planning Department Recommendation
Conditional Use Permit

1) *Vote to find that the Conditional Use Permit Application meets the requirements set forth in Section 10.1112.14 of the Ordinance and adopt the findings of fact as presented.*

(Alt.) Vote to find that the Conditional Use Permit Application meets the requirements set forth in Section 10.1112.14 of the Ordinance and adopt the findings of fact as amended.

2.) *Vote to grant the Conditional Use Permit with the following conditions:*

- 2.1) *Parking in front of the building shall be designated for moped/motorcycle parking with appropriate signage.*

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. REQUEST TO POSTPONE** The request of **Atlas Commons LLC (Owner)**, for property located on **581 Lafayette Road** requesting Site Plan review approval for two 4-story additions to the existing building that will total 72 residential units with associated site improvements including lighting, utilities, landscaping, and stormwater treatment/management and a Conditional Use Permit from Section 10.5B72 for increased density, building height and footprint. Said property is located on Assessor Map 229 Lot 8B and lies within the Gateway Corridor (G1) District. (LU-23-189) **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.

- C. The request of **Edward R. Reynolds (Owner)**, for property located on **110 Aldrich Road** requesting a Wetland Conditional Use Permit in accordance with Section 10.1017 for the construction of a 768 s.f. detached, two car garage with an accessory dwelling unit on the second floor. Approximately 522 s.f. will be impacting the 100 ft wetland buffer as a permanent impervious impact, with the edge of the proposed garage located approximately 76 ft from the wetland resource and a Conditional Use permit to construct a Detached Accessory Dwelling unit in accordance with Section 10.814.62 Said property is located on Assessor Map 153 Lot 3 and lies within the Single Residence B (SRB) District. (LU-23-174)

Project Background

This applicant is requesting a Conditional Use Permit for a Detached Accessory Dwelling Unit (DADU) and a Wetland Conditional Use Permit for the construction of a 768 s.f. detached, two car garage with an accessory dwelling unit on the second floor. Approximately 522 s.f. will be impacting the 100 ft wetland buffer as a permanent impervious impact, with the edge of the proposed garage located approximately 76 ft from the wetland resource. To mitigate the impacts to the wetland buffer, the applicant is proposing to remove 144 s.f. of impervious asphalt from the buffer, and an additional 590 s.f. of asphalt from outside the buffer, to be converted to pervious pavers for the driveway. The applicant is also proposing the addition of plastic reinforced grass area to lead from the proposed garage bays to the existing driveway area.



The applicant is seeking two modifications for the DADU. Per Section 10.814.63 below, the Planning Board may modify certain standards in this section except for the size and height of the ADU.

10.814.63 In granting a conditional use permit for an **accessory dwelling unit**, the Planning Board may modify a specific standard set forth in Sections 10.814.26 and 10.814.30 through 10.814.50 (except the size and height of any ADU), 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 10.814.62.

The applicant is seeking a modification from Section 10.814.53 to allow a 16' wide single garage door instead of the 9' maximum per the Ordinance. The applicant has provided images of similar garage doors in the neighborhood, therefore allowing this modification would not be out of character with the surrounding properties.

Additionally, the applicant is seeking a modification from Section 10.814.436 to allow the roof dormer to occupy 57% of the roof plane where 33% is the maximum allowed. The justification provided by the applicant is the dormer will match the existing dormer on the side of the principal dwelling. The DADU complies with all other requirements for detached accessory dwelling units.

Project Review, Decisions, and Recommendations

The applicant was before the Conservation Commission. See below for details.

Conservation Commission

The applicant was before the Conservation Commission at its regularly scheduled meeting of Wednesday, March 13, 2023 and the Commission voted 6-1 to recommend approval with the following stipulations:

- 1. Applicant shall provide a clear delineation of the proposed driveways and their surfaces; including the proposed permeable paver driveway and the plastic-reinforced driveway. Specifications on the driveways should include any edging and/or plantings, and a cross-section of each driveway surface type shall be provided which should include the substrate material and its proposed depth.*
- 2. Applicant shall provide a maintenance plan for the proposed driveway material and a maintenance plan for the plastic-reinforced driveway material.*
- 3. Applicant shall include information in the final site plan for any drainage swales and/or drip edges proposed for drainage off the new garage roof. For the proposed drip edges, please include a cross-section of the proposed drip edge construction, along with the substrate material and its proposed area and depth.*
- 4. Applicant shall provide a planting plan that includes the location, size and species of the proposed plantings within the 25' vegetative buffer. This should include at least 10 shrubs of a native species.*
- 5. In accordance with Section 10.1018.40 of the Zoning Ordinance, applicant shall install permanent wetland boundary markers. We suggest that these markers are placed along the 25' vegetative buffer at intervals of every 50 feet. These must be installed prior to the start of any construction. These can be purchased through the City of Portsmouth Planning and Sustainability Department.*
- 6. Applicant shall remove all debris/trash from the wetland and 25' vegetative buffer, including the wood decking/pallet structure.*

The Planning Board application has addressed conditions 1-4 above and conditions 5 and 6 have been included in the staff recommendation.

Staff Analysis – Wetland CUP

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.

The majority of the proposed construction will take place within the 100' buffer, mostly within the last 25' of the wetland buffer.

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

This property is in Zone SRB, which requires at least a 30' front setback for structures. There is some room to locate the garage closer to the front, but there is no alternative that would remove it completely from the 100-foot buffer. The DADU must be 10 feet back from the front wall of the principal dwelling.

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

The applicant is proposing to introduce approximately 768 s.f. of new impervious within the buffer, they are planning to offset that with the removal of the 734 s.f. impervious driveway, of which 144 s.f. are within the buffer.

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

The existing site consists of a lawn. Buffer plantings are proposed along the edge of the wetland area.

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

The proposal aims to mitigate impervious impacts with the installation of pervious pavers. The design and maintenance have been provided to ensure their permeability over time.

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

Proposed plantings within the vegetated buffer strip (first 25' of buffer) have been added to the plan to further protect and enhance the quality of the wetland resource.

Planning Department Recommendation

Wetland Conditional Use Permit

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

(Alt.) Vote to find that the Conditional Use Permit Application meets the requirements set forth in Section 10.1017.50 of the Ordinance and adopt the findings of fact as amended.

2.) *Vote to grant the 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. We suggest that these markers are placed along the 25' vegetative buffer at intervals of every 50 feet. These must be installed prior to the start of any construction. These can be purchased through the City of Portsmouth Planning and Sustainability Department.*

2.2) *Applicant shall remove all debris/trash from the wetland and 25' vegetative buffer, including the wood decking/pallet structure.*

Planning Department Recommendation
Detached Accessory Dwelling Unit Conditional Use Permit

1) *Vote to find that the Conditional Use Permit Application meets the requirements set forth in Section 10.814.62 of the Ordinance and adopt the findings of fact as presented.*

(Alt.) Vote to find that the Conditional Use Permit Application meets the requirements set forth in Section 10.814.62 of the Ordinance and adopt the findings of fact as amended.

2.) *Vote to grant the following modifications:*

2.1) *Modification from Section 10.814.53 to allow a 16' wide garage door.*

2.2) *Modification from Section 10.814.436 to allow a roof dormer to occupy 57% of the roof plan where 33% is the maximum.*

3) *Vote to grant the Conditional Use Permit with the following conditions:*

3.1) *Documentation of the conditional use permit approval shall be recorded at the Rockingham County Registry of Deeds, together with an affidavit that either the principal dwelling unit or the accessory dwelling unit will be occupied by the owner of the dwelling as the owner's principal place of residence, as required by Section 10.814.22.*

3.2) *A certificate of use issued by the Planning Department is required to verify compliance with the standards of this Section, including the owner occupancy and principal residency requirements. Said certificate shall be issued by the Planning Department upon issuance of a certificate of occupancy by the Inspection Department. A certificate of use shall not be issued prior to recording of documentation as required by this Ordinance.*

3.3) *The certificate of use shall be renewed annually upon submission of such documentation as the Planning Department may require to verify continued compliance with the standards of this Section. Failure to comply with this requirement shall be deemed a violation of the ordinance and may be enforced as provided in Article 2.*

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. Consider amendments to change the definition of a home occupation found in Chapter 10, Article 15 Definitions, pursuant to Section 10.150 of the Zoning Ordinance.

Background

At the February 20, 2024 meeting, City Council voted to request the language in the City Council packet related to Home Occupation use be sent to the Planning Board for discussion and returned to the City Council.

The Master Plan speaks to expanding the opportunities for home-based businesses. This trend was realized in the Master Plan and became more prevalent during the pandemic. Goal 3.1.3 below appears in several sections of the Master Plan with the goal of enhancing economic development, enriching the urban and suburban neighborhoods, and to encourage the creative use of existing housing stock.

3.1.3 Expand opportunities for home-based businesses.

The language below was sent to Council to allow more flexibility in the home occupation use, which currently prohibits any client, vendor or general public visitation. The proposed amendment below would allow up to 2 clients at one time for a home occupation, 1 or 2. This would allow, for example, someone to teach art or give music lessons as a home occupation and have clients come to their house.

Proposed language shown in red.

Home occupation

An **office** or other **use** customarily conducted as an **accessory use** to a **dwelling**, complying with all the following standards:

- (a) Conducted entirely within a **dwelling** or an existing **accessory building**, and with no change to the character of the **dwelling** or **accessory building**;
- (b) Maximum floor area of 300 square feet;
- (c) No **outdoor storage** of materials or products;
- (d) Outdoor parking of no more than one vehicle related to the **home occupation**;
- (e) No deliveries by vehicles with more than two axles.

Home occupation 1

A **home occupation** with no nonresident employees; no **sign** related to the business; no **more than 2** client, vendor or general public visitations **at one time**; and no deliveries other than by regular postal service and no more than one package delivery service truck (e.g., FedEx, UPS, etc.) per day.

Home occupation 2

A **home occupation** with not more than one nonresident employee.

Planning Department Recommendation

1) *Vote to recommend to City Council to hold first reading on the zoning amendments for home occupation.*

III. CITY COUNCIL REFERRALS

A. Home Occupation (*See above notice*)

B. Solar Amendments

Background

After the joint work session with the Historic District Commission on February 21, 2024, Chair Chellman and Chair Ruedig attended the City Council meeting on March 4 to report back on the joint meeting and the solar amendments. At the meeting, the following action took place:

11. Chairman Chellman and Chairwoman Ruedig, plan to give a brief update to council on the joint meeting and be available to answer any questions the council might have about the plan moving forward – Planning Board Chair Chellman and Historic District Commission Chair Ruedig requested that the City Council allow the Planning Board & HDC to work together over the next two months on bringing forward amendments to the zoning ordinance regarding solar panels.

Moved to hold First Reading on April 1, 2024, to amend Chapter 10, Article 6, Section 10.633.20 by adding a new numbered paragraph 28 “Solar Energy Panels flush mounted to rooftops of existing structures which do not require other alternations to existing structures” and by adding a new numbered paragraph 29 “Accessory Elements to Solar Energy Panels which do not require other alternations to existing structures”.

Moved a friendly amendment for first reading to be held at the May 6, 2024 City Council meeting.

Voted to hold First Reading on May 6, 2024, to amend Chapter 10, Article 6, Section 10.633.20 by adding a new numbered paragraph 28 “Solar Energy Panels flush mounted to rooftops of existing structures which do not require other alternations to existing structures” and by adding a new numbered paragraph 29 “Accessory Elements to Solar Energy Panels which do not require other alternations to existing structures.” Councilor Cook voted opposed.

The HDC has since had several meetings discussing this topic and provided the following language for consideration to the Planning Board which will be presented to the Council at their May 6, 2024 meeting.

VII. OTHER BUSINESS

A. Chairman's Updates and Discussion Items

VI. ADJOURNMENT